

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

BERKELEY HALL SCHOOL, INC.,  
Respondent.

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Transcript of the Record

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Upon Petition to Review an Order of the United States  
Board of Tax Appeals.

FILED

MAR 20 1936

PAUL P. O'BRIEN,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES:

For Petitioner:

CLAUDE I. PARKER, Esq.,

JOHN B. MILLIKEN, Esq.,

RALPH W. SMITH, Esq.,

L. A. LUCE, Esq.,

GIRARD F. BAKER, Esq.,

For Respondent:

C. H. CURL, Esq.

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Docket No. 47415.

BERKELEY HALL SCHOOL, INC.,  
a Corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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DOCKET ENTRIES:

1930

Feb. 10—Petition received and filed. Taxpayer notified. (Fee paid).

Feb. 11—Copy of petition served on General Counsel.

Mar. 29—Answer filed by General Counsel.

Apr. 1—Copy of answer served on taxpayer—  
General Calendar.

1930

- May 14—Order placing proceeding on Los Angeles, California, Circuit Calendar, entered.
- July 18—Notice of appearance of John B. Milliken as counsel for taxpayer filed.

1931

- July 25—Motion to file amendment to answer filed by General Counsel—amendment tendered.
- July 28—Motion granted.
- Sept. 4—Reply to amendment to answer filed by taxpayer. 9/8/31 copy served on General Counsel.

1933

- July 12—Hearing set in Long Beach, Calif., beginning Sept. 25, 1933.
- Sept. 26 & 27—Hearing had before Mr. Leech on merits—submitted. Amendment to petition and appearances of Girard F. Baker and Ralph W. Smith filed. Briefs due Nov. 24, 1933.
- Oct. 11—Transcript of hearing of Sept. 26 and 27, 1933 filed.
- Nov. 23—Brief filed by General Counsel.
- Dec. 1—Motion for extension of time to Jan. 1, 1934 to file brief filed by taxpayer. 12/1/33 granted to Dec. 15, 1933 to both parties.
- Dec. 15—Motion for five days extension to file brief filed by taxpayer. 12/19/33 granted.
- Dec. 16—Brief filed by taxpayer.

1935

- Jan. 24—Findings of fact and opinion rendered—  
J. Russell Leech, Division 6. Decision  
will be entered for the petitioner.
- Jan. 31—Decision entered—J. Russell Leech, Divi-  
sion 6.
- Apr. 13—Petition for review by U. S. Circuit Court  
of Appeals, 9th Circuit, with assignments  
of error filed by General Counsel.
- Apr. 22—Proof of service filed by General Counsel.
- June 4—Motion for extension to Aug. 13, 1935 to  
complete and transmit record filed by Gen-  
eral Counsel. [1\*]
- June 4—Order enlarging time to Aug. 13, 1935  
for preparation of evidence and delivery  
of record entered.
- Aug. 5—Motion for extension to Oct. 14, 1935 to  
complete and transmit record filed by  
General Counsel.
- Aug. 5—Order enlarging time to Oct. 14, 1935 to  
complete and transmit record entered.
- Oct. 9—Motion for extension to 12/14/35 to com-  
plete and transmit record filed by General  
Counsel.
- Oct. 9—Order enlarging time to Dec. 14, 1935 for  
preparation of evidence and delivery of  
record entered.
- Dec. 2—Motion for extension to 1/14/36 to com-

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.

1935

plete and transmit record filed by General Counsel.

Dec. 2—Order enlarging time to Jan. 14, 1936 for preparation of evidence and delivery of record entered.

Dec. 5—Statement of evidence lodged.

1936

Jan. 3—Motion for extension to Feb. 5, 1936 to complete and transmit record filed by General Counsel.

Jan. 3—Order enlarging time to Feb. 5, 1936 for preparation of evidence and delivery of record entered.

Jan. 9—Praecipe filed—proof of service thereon.

Jan. 9—Notice of lodgment of statement and setting for hearing Jan. 8, 1936 filed—proof of service thereon.

Jan. 11—Notice of lodgment of statement with hearing notice 1/22/36 filed.

Jan. 15—Notice of lodgment of statement with hearing notice 1/22/36 filed—proof of service thereon.

Jan. 22—Hearing had before Mr. Leech on approval of statement of evidence—ordered that statement of evidence heretofore lodged by approved.

Jan. 22—Order that statement of evidence for the petitioner-on-review heretofore lodged by approved entered.

Jan. 24—Transcript of hearing of Jan. 22, 1936 filed. [2]

United States Board of Tax Appeals.

Docket No. 47415.

BERKELEY HALL SCHOOL, Inc.,

a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### PETITION.

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:AR:C-5 RL-60D, dated December 14, 1929, and as a basis of its proceedings alleges as follows:

1. The petitioner is a corporation with its principal office at 300 North Swall Drive, Beverly Hills, California.

2. The notice of deficiency, a copy of which is hereto attached and marked Exhibit A, was mailed to the petitioner on December 14, 1929.

3. The taxes in controversy are income taxes for the fiscal year ending June 30, 1925, and for \$12,021.99, the whole of said tax being in dispute.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) Respondent erred in determining any deficiency in tax against petitioner for the

fiscal year ending June 30, 1925, for the reason that the income subjected to tax by respondent was not in fact income of petitioner but capital. [3]

(b) The respondent erred in determining a deficiency in tax against petitioner for the fiscal year ending June 30, 1925, for the reason that the property acquired by petitioner and determined by the respondent as income was acquired by gift and was not income to the petitioner, and therefore exempt from taxation.

(c) The respondent erred in failing to find that petitioner received the property of Tract No. 3613, which was applied for school purposes, in trust and that under said trust said property was to be held forever for educational purposes and no part of the net earnings thereof could inure to the benefit of any private shareholder or individual.

(d) The respondent erred in failing and refusing to determine the alleged income for the fiscal year ending June 30, 1925, under the provisions of Section 231 (6) or Section 213(b) (3) of the Revenue Act of 1924.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

For many years prior to 1923, the three ladies, incorporators and owners of the stock of petitioner corporation, had operated a private school for children in the City of Los Angeles, California; the

parents of most of the children attending said school were of Christian Science faith or students of Christian Science. Late in the year 1922, a group of the parents of the children attending said school formulated the plan of purchasing for and in behalf of the school a large tract of land situate in Beverly Hills, California, with the plan in mind of selling sufficient of the acreage to meet the purchase price and leave an overplus to be used in the construction of new school buildings on the balance of the unsold acreage, [4] thus definitely providing the school with grounds and a fund for the reestablishment thereof. In order to finance the purchase of the tract, it was necessary that certain staunch friends of the school enter into a certain written guarantee for the benefit of the seller of said tract under which they became responsible for the initial payment of the purchase price. Title to the school property was, however, taken in the name of petitioner, a private corporation, nevertheless the fund and property so received for school purposes was impressed with a trust for the establishment and maintainance thereon of a school in which the principals and those interested were devoted to the Christian Science faith.

The respondent has erroneously determined that the value of the land so received by the school together with the proceeds of the sale of the other acreage to be applied for the erection of school buildings was income to petitioner. Of the total consideration involving this huge undertaking only

\$1,000.00 was subscribed by the school, the balance being realized by its friends and from the sale of the acreage. It is therefore apparent that the fund and property so received by the school represented a gift from the friends of the enterprise, without whose support the project could not have been realized, and by reason of the understanding between the parties involved for the establishment and dedication of the tract for school purposes, the property was impressed with a trust for educational purposes and not for profit, which trust has at all times been carried out and its terms complied with.

WHEREFORE, petitioner prays that this Board may hear the proceedings and determine that the respondent erred in failing to [5] find that the real and personal property so received by petitioner was a gift to it and as such was impressed with a trust for educational purposes and not for profit or gain.

CLAUDE I. PARKER

RALPH W. SMITH

Counsel for Petitioner.

808 Bank of America Bldg.,  
Los Angeles, California. [6]

State of California

County of Los Angeles—ss.

LEILA L. COOPER, being first duly sworn, says that she is the President of the petitioner corporation, and that she is duly authorized to verify the foregoing petition; that she has read the foregoing



petition, or had the same read to her, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts she believes to be true.

LEILA L. COOPER

Subscribed and sworn to before me this 6th day of February, 1930.

[Seal] PEARL ANDERSON

Notary Public, in and for the County of Los Angeles, State of California. [7]

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EXHIBIT "A".

TREASURY DEPARTMENT

Washington

Office of

Commissioner of Internal Revenue

Dec. 14, 1929.

Berkeley Hall School, Incorporated,  
300 North Swall Drive,  
Beverly Hills, California

Sirs:

In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the fiscal years ended June 30, 1924, 1925, 1926 and 1927 discloses a deficiency of \$12,021.99, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax

Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

ROBT. H. LUCAS,

Commissioner.

By DAVID BURNET

Deputy Commissioner.

Inclosures:

Statement

Form 866

Form 882 [8]

## STATEMENT.

IT:AR:C-5

RL-60D

In re: Berkeley Hall School, Incorporated,  
300 North Swall Drive,  
Beverly Hills, California

## TAX LIABILITY.

Years	Corrected Tax Liability	Tax Previously Assessed	Deficiency
Fiscal, ended			
June 30, 1924	None	None	None
June 30, 1925	\$12,021.99	None	\$12,021.99
June 30, 1926	None	None	None
June 30, 1927	None	None	None
Totals	<u>\$12,021.99</u>	<u>None</u>	<u>\$12,021.99</u>

Reference is made to the reports of the Internal Revenue Agent in Charge and to your protests submitted under dates of October 26, 1928 and August 2, 1929.

Careful consideration has been accorded your protest in connection with the agent's findings and the report on the conferences held with your representative on November 7, 1928 and September 16, 1929, in the office of the Agent in Charge. The adjustments recommended by the agent as the result of the conferences have been approved by this office.

	1924	
Tax liability reported and accepted.....		None
	1925	
Net income reported on return.....		\$ 991.14
Add:		
1. Distributive share of income from Trust		
#109 .....		111,883.88
		<hr/>
Net income as adjusted .....		\$112,875.02

### EXPLANATION OF ADJUSTMENT

1. It has been held by this office that since the Rodeo Land and Water Company qualifies as a Trust under Section 704 of the Revenue Act of 1928 the income received by you is taxable. [9]

### COMPUTATION OF TAX

Net income	\$112,875.02
Less:	
Loss for 1924	18,584.94
	<hr/>
Balance taxable at 12½% and 13%	\$ 94,290.08
Amount of tax at 12½%	\$ 5,893.13
Amount of tax at 13%	6,128.86
	<hr/>
Total tax	\$ 12,021.99
Original tax	None
	<hr/>
Deficiency	\$ 12,021.99

	1926	
Tax liability reported and accepted		None

1927

Tax liability reported and accepted                      None

Consent which will expire December 31, 1929, except as extended by the provisions of Section 277(b) of the Revenue Act of 1926, is on file for the year 1925.

[Endorsed]: Filed Feb. 10, 1930. [10]

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[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, C. M. CHAREST, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations of Paragraph 1.
2. Admits the allegations of Paragraph 2.
3. Admits the allegations of Paragraph 3.
4. (a) Denies the error complained of in Paragraph 4 (a).  
(b) Denies the error complained of in Paragraph 4 (b).  
(c) Denies the error complained of in Paragraph 4 (d).

5. As to the first subparagraph of Paragraph 5, the Commissioner admits that for many years prior to 1923, the three ladies, incorporators and owners of the stock of petitioner corporation, had operated a private school for children in the City of Los An-

geles, California; the parents of most of the children attending said school were of Christian Science faith or students of Christian Science. Late in the year 1922, a group of the parents of the children attending said school formulated the plan of purchasing a large tract of land situated in Beverly Hills, California; and denies the remainder thereof.

Denies the matter set forth in the second subparagraph of Paragraph 5. [11]

Denies, generally and specifically, each and every allegation in the taxpayer's petition contained not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the taxpayer's petition be denied.

(Signed) C. M. CHAREST

General Counsel

Bureau of Internal Revenue.

Of Counsel:

JOHN E. MARSHALL,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: Filed Mar. 29, 1930. [12]

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[Title of Court and Cause.]

FINDINGS OF FACT AND OPINION.

Promulgated January 24, 1935.

1. EXEMPTION—CHARITABLE ORGANIZATION.—Where a corporation is not both “organized and operated exclusively” for educational

or other purposes named in the Revenue Act of 1924, section 231 (6), HELD it is not exempt from income tax thereunder. James Sprunt Benevolent Trust, 20 B. T. A. 19, followed.

2. INCOME — TRUSTEE FOR CHARITABLE PURPOSE.—Where certain individuals caused certain property to be conveyed to petitioner without cost to it with the understanding that such property together with the income derived from its sale, was to be devoted to a definite charitable use, namely, the establishment and maintenance, in perpetuity, of a school for children under the influence of the Christian Science faith, and, under such conditions, attempted application of the fund by petitioner for its own individual use would be subject to restraint by a court of equity and a constructive trust declared, it is HELD that income accruing from the sale of such property, in carrying out the purposes intended, was not taxable to petitioner.

Ralph W. Smith, Esq., Girard F. Baker, Esq., and L. A. Luce, Esq., for the petitioner.

C. H. Curl, Esq., for the respondent.

This proceeding involves a deficiency in income taxes for the fiscal year ending June 30, 1925, in the sum of \$12,021.99.

The amendment to the petition included herein the fiscal years ending June 30, 1924, 1926, and 1927. Since the respondent has not determined any deficiencies for other than the fiscal year ending June 30, 1925, this Board has no jurisdiction in respect of any other years. The proceedings are, therefore, dismissed so far as they relate to other

than the fiscal year ending June 30, 1925. Standard Island Creek Coal Co., 28 B. T. A. 697.

The petitioner, by its assignments of error, raises four issues, which are:

1. Whether the petitioner is entitled to an exempt status for the fiscal year ending June 30, 1925, under the provisions of section 231 (6) and section 213 (b) (3) of the Revenue Act of 1924. [13]

2. Whether the petitioner received the property by purchase or in trust for the furtherance of educational purposes.

3. Whether if a profit was realized, the taxability of same must be deferred until the tract of land acquired by petitioner is disposed of that it may be determined whether or not the transaction results in net income.

4. Whether respondent employed the proper method in arriving at the simulated net income of petitioner.

#### FINDINGS OF FACT.

The petitioner was incorporated in 1920 under the laws of the State of California as a private educational institution. Its stock, since incorporation, has been owned in equal parts by two Misses Cooper and a Miss Stevens. The school was originally organized in 1911 by the two Misses Cooper, who were later joined by Miss Stevens, for the purpose of training and instructing children and wards of Christian Scientists.

The school progressed from its inception, but



the organizers drew no salaries and used the small profits for the purchase of additional property for the school. In 1923 the net value of the property of petitioner was approximately \$12,000.

In 1923, because of the lack of recreation facilities for the older children, petitioner found it impossible to continue and was preparing to close the school and rent the buildings to provide its stockholders with income upon which to live. When the parents of the children in the school became aware of this condition they became much disturbed as the discontinuance of the school would leave them without a school for children operated under the influence of the Christian Science faith. They were intensely interested in the maintenance of such a school. A meeting was called, attended by some sixty parents, at which the situation was discussed and an informal organization of the parents was effected. A study of the situation was determined upon to work out some method of securing the continued operation and maintenance of a school of the character desired. One plan considered was to procure a loan for this petitioner, upon a guarantee or endorsement of the parents, of sufficient funds for it to acquire the necessary properties for its continued operation. In connection with this plan a certain paper was executed and signed by a number of the parents as follows:

Los Angeles, California,

April 13th, 1923.

We the undersigned hereby agree to be one of twenty or more signers to a guarantee to a

certain Bank or Trust Company in Los Angeles, California, to be selected by Berkeley Hall School. This guarantee not to exceed Two hundred fifty Thousand Dollars (\$250,000 and to be secured by fifty or more acres of land in Los Angeles County in the Beverly District as outlined at a meeting held this date at Berkeley Hall School. [14]

This guarantee was, however, not used. One of the parents of the children, a Mr. Gilchrist, who had been quite active in the efforts of the parents to work out some solution of the problem, was a prominent real estate operator, experienced in subdivision work. This man learned of a tract of land available for purchase in Beverly Hills, California, consisting of approximately 77.3 acres. Upon approaching the owners of this tract, the Rodeo Land & Water Co., he secured an offer from this company that it would give an option to purchase the tract for \$462,180, payable \$100,000 upon the execution of the conveyance and the balance at stated intervals. For a 10-day option this company required a deposit of \$10,000, to be forfeited if the option was not exercised.

A meeting of the parents was immediately called by Gilchrist and informed of the offer. A plan was submitted by him for a subdivision of the property into lots and a sale of all the property with the exception of approximately seven acres which would be set aside for school buildings. The price set upon the lots sold was to be fixed in amounts to return

sufficient money to pay the purchase price of the entire tract, plus approximately \$80,000 which it was estimated would be necessary to erect the school buildings required. Under this plan it was proposed that the parents would purchase the lots at the prices fixed and any lots not sold in this way would be offered to the public. It was contemplated that the parents would be able to dispose of these remaining lots to their friends and associates.

This plan appeared feasible to the parents, who thereupon directed that the option be procured. Certain of the parents advanced the required sum of \$10,000, although receipt therefor was taken in the name of petitioner. It was understood that if the option was exercised this amount would be returned to them, both of which occurred. The option was thereupon procured by the payment of the \$10,000 advanced and was taken in the name of petitioner.

Immediately upon the signing of the option, Gilchrist platted its subdivision into lots and computed a sale price for each lot. This sales price was determined by assigning to each lot a proportionate amount of the cost of the entire tract and a proportionate amount of the estimated cost of subdivision. To the cost of each lot as thus determined there was added in each instance a proportionate amount of the sum necessary to pay the cost of the seven acres set aside as a location for the school and the \$80,000 determined upon as necessary to be raised for the erection of the school buildings. Upon completion of these computations Gilchrist presented them at a

meeting of the parents and the subdivision of the property was exhibited to them with the prices which each lot would carry. The parents were called upon to subscribe for the purchase of as many [15] lots as possible on this agreed basis. The parents made a very substantial response to this request and subscribed for a large number of lots, some of them taking as many as five lots, the particular lot or lots subscribed for being then and there selected by the purchasers.

Thereupon the Bank of America of Los Angeles, California, was requested to act as trustee for the purpose of taking title to the tract of land in question, executing the conveyances of the several lots, collecting the proceeds of sale and paying the development costs and the several payments to be made to the Rodeo Land & Water Co. It was contemplated that the bank would be required to advance approximately \$135,000 for the making of the initial payments and that this amount would be repaid to it from the proceeds of lot sales, but before it would agree to accept the trust and obligate itself to make the necessary advance, the bank required the parents individually to guarantee such advance and this guarantee was thereupon executed by them in this amount. It afterward developed that this guarantee was unnecessary as the down payments on lots sold were sufficient to meet all the payments required of the bank as trustee.

Upon the bank agreeing to act as trustee in the subdivision of the property, the parents caused to be executed a deed of trust which designated the

bank as trustee, the Rodeo Land & Water Co. as the seller of the property, and the petitioner, Berkeley Hall School, as beneficiary. It signed the trust instrument at the request and direction of the committee of the parents' organization which was handling the matter. The three stockholders and officers of petitioner were women without business experience. The president of petitioner signed the trust instrument merely because directed to do so and upon the assurance that its execution would make possible the execution of the plan conceived by the parents for the establishment of a school for children under the influence of the Christian Science faith.

The sale of all the lots in the subdivision was effected within a very short period. All but two or three of the lots were sold before the examination of the title to the tract had been completed and conveyance of the property had been made to the trustee by the Rodeo Land & Water Co. When that title was finally transferred to the trustee there had already been delivered to it by Gilchrist, who was in charge of sales, executed contracts for lot purchases and deeds covering these, for execution by the trustee, in respect of nearly every lot in the subdivision. The cash at that time in the hands of the trustee, and representing down payments on these lot purchases, [16] was in excess of the \$100,000 initial cash payment required to be made to the Rodeo Land & Water Co.

The parents of the children of the school operated

by petitioner had no intention, in arranging for and effecting the acquisition of this property by petitioner, that the amounts voluntarily paid by them in excess of the cost of such lots, together with the benefits and income resulting from their activities in the sale of lots and represented ultimately by the cash and land transferred by the trustee to the petitioner, should inure in any way to the personal benefit of petitioner and its stockholders. It was at all times their intention that this property and the profits accruing thereon in the course of the transaction, initiated and carried through by them, should constitute a fund for the establishment and maintenance in perpetuity of a school for children at Beverly Hills, California, to be operated under the influence of the Christian Science religion. This plan and purpose of the parents of the children was at all times understood and acquiesced in by petitioner and its stockholders. It realized always that the properties which would come into its hands as the result of the several transactions above described, carried out at the instance of the parents of the children and without cost to petitioner, would be received by it for use only for the purposes for which intended by the parents, namely, the establishment in perpetuity of a school of the character desired. That the purpose of the transactions in the acquisition of this property was charitable was recognized by the Bank of America as trustee and its charge for acting in this capacity was for that reason reduced to one third of the usual and customary amount.

The lots in question were ultimately disposed of and the profit realized by the Bank of America as trustee in the taxable year 1925 was the sum of \$111,883.88. Those profits are the basis for the pending deficiency. The trustee paid over to petitioner the funds in its hands remaining after payment of the purchase price of the tract to the Rodeo Land & Water Co. and the payment of development and trustee's expenses. The amounts so paid to petitioner were entered upon its books in a separate account from its own funds and were expended under direction of a committee of the parents' organization in the erection of buildings upon the seven-acre tract. The trust of the Bank of America was terminated in 1927 by the transfer of the title to the seven-acre tract mentioned, by quitclaim deed, to petitioner as "beneficiary" of the trust.

Petitioner, upon receipt of the property coming to it as "beneficiary" of the trust in question, itself made an effort to secure the perpetuation of this fund or foundation in accordance with the [17] desire and intention of the parents' organization. A prominent member of the Christian Science Church made a trip to Boston, Massachusetts, to the headquarters of the church and asked, for petitioner and the parents' organization, that the church accept a transfer of the properties from petitioner and act as the permanent trustee in administration of the fund. This request was refused by the church for the reason that its activities were limited to those religious. Under its rules it could not assume as trustee the operation of a school. Steps were

thereupon taken to effect the same result through a permanent trustee other than the Christian Science Church and at the time of the hearing of this proceeding this arrangement had either been finally completed or was then being effected. Pending the appointment of a permanent trustee the property has been administered by a board of trustees on which the three stockholders of petitioner have membership.

Respondent concluded the trust above mentioned with the Bank of America as trustee was such a trust as is described in section 704(b) of the Revenue Act of 1928,<sup>1</sup> and, since on September 18, 1928, such trustee filed its election under the provisions of that section to have its income taxed to its "beneficiary", the petitioner, the pending deficiency was determined.

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<sup>1</sup> Sec. 704. (b) For the purpose of the Revenue Act of 1926 and prior Revenue Acts, a trust shall, at the option of the trustee exercised within one year after the enactment of this Act, be considered as a trust the income of which is taxable (whether distributed or not) to the beneficiaries, and not as an association, if such trust (1) had a single trustee, and (2) was created and operated for the sole purpose of liquidating real property as a single venture (with such powers of administration as are incidental thereto, including the acquisition, improvement, conservation, division, and sale of such property), distributing the proceeds therefrom in due course to or for the benefit of the beneficiaries, and discharging indebtedness secured by the trust property, and (3) has not made a return for the taxable year as an association.



## OPINION.

LEECH: The petitioner is a corporation which owned and operated a school for children of persons in Los Angeles, California, who were interested in Christian Science. It was about to discontinue this school in 1923 because of a lack of necessary facilities. When the parents of some of the students of the school learned of its proposed discontinuance they discussed the situation among themselves and finally adopted a plan to secure necessary real estate and a sufficient sum of money to provide and perpetuate in Los Angeles a school for children of persons interested in Christian Science. In order to obtain the real estate and the necessary cash this group of parents planned to obtain a tract of land, retain a plot for the school, and subdivide and sell the remaining lots at a sufficient profit to create the fund desired. The Bank of America was named as [18] trustee to purchase the property, subdivide it, sell and convey the lots, and finally to transfer to the petitioner the plot retained for the school and the fund realized from the profit in the sale of the lots. The petitioner understood this plan and was party to it. The petitioner was called a "beneficiary" of the trust of which the bank was trustee. But it was thoroughly understood by all interested parties that when the petitioner should receive the plot of ground and the net proceeds from the sale of the lots it would receive these things, not for its own use and benefit, but in a fiduciary capacity only. These net proceeds were turned over to the peti-

tioner by the bank in 1925. The Commissioner has determined the present deficiency in the income tax of this petitioner on the theory that these net proceeds received by the petitioner in 1925 represent income to the petitioner in its ordinary corporate capacity.

Petitioner contends that it is personally exempt from income tax under section 231 (6) of the Revenue Act of 1924<sup>2</sup> as a corporation "organized and operated exclusively for educational purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual." This position is untenable. Petitioner is a private corporation, organized for profit. The mere fact that it has not distributed its earnings to its stockholders is not controlling. It has such right and there is nothing which precludes its exercise. Consequently it is not entitled to the exemption provided. *James Sprunt Benevolent Trust*, 20 B. T. A. 19; *Journal of Accountancy, Inc.*, 16 B. T. A. 1260. Cf. *Bowers v. Slocum*, 20 Fed. (2d) 350; *Sand Springs Home*, 6 B. T. A. 198; *Young Men's Christian Association Retirement Fund, Inc.*, 18 B. T. A. 139; *The Jockey Club*, 30 B. T. A. 670.

But the taxability of this fund in petitioner's hands, on the facts here disclosed, must be resolved

<sup>2</sup> Sec. 231. (6) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

by the application of other principles. Respondent has proposed and is insisting upon the pending deficiency against petitioner, not as trustee, but in its individual capacity. Cf. *Mary M. Shea*, 31 B. T. A. 513. Thus, none of the fund in dispute is taxable here, unless received by this petitioner for its "separate use, benefit and disposal", *Eisner v. Macomber*, 252 U. S. 189, and subject to its "unfettered command." *Corliss v. Bowers*, 281 U. S. 376. Obviously, the funds supporting the present deficiency had no such character in petitioner's hands.

It appears clear upon careful consideration of the record that the fund in question represents the voluntary contribution of the [19] organization of parents of the students at petitioner's school, and the result of the labors of these parents in effecting sales of lots under a plan conceived and carried out by them. The purpose of this plan was the establishment and maintenance, in perpetuity, of a school for children under the influence of the Christian Science faith. This purpose and plan of the parents was definitely understood by petitioner. Petitioner paid no money. The petitioner was used only as a convenience in carrying out the plan. The only consideration passing from it for its receipt of the disputed funds and the real estate was petitioner's agreement to accept them in accordance with that plan and purpose. That this property and presently disputed proceeds were so received by petitioner is further supported by the evidence of the action taken by petitioner immediately thereafter. These proceeds, always kept in a separate account

from petitioner's individual funds, were, from the time of their receipt, administered by a committee representing the organization of parents interested in the plan. The petitioner and the parents' organization attempted to effect the charitable object through the appointment of the Christian Science Church as a permanent trustee of the property and fund, as soon as received. Following failure in that effort, they continued to perfect the necessary arrangements to secure the use of the property and fund in perpetuity for the purpose specified.

Respondent proposes the present deficiency against petitioner as "beneficiary" of such a trust as is described in the Revenue Act of 1928, section 704 (b), *supra*, which is said to conclude us here because of its retroactive application. But "beneficiary", as there used, has its ordinary and generally understood meaning in the law of trusts, which does not include petitioner on the present record. See Theodore P. Grosvenor, 31 B. T. A. 574; Percy H. Clark, 31 B. T. A. — (No. 196); Franklin Miller Handly, 30 B. T. A. 1271. Petitioner has never treated this fund or property as its own. It did not receive either of them for use in its individual corporate purposes. All of petitioner's disclosed actions indicate an understanding on its part that its receipt and holding was, not in its individual corporate capacity, but as trustee of a trust created for the purpose of providing and perpetuating a school for the children of students and friends of Christian Science. This was a juristic, charitable trust of which indefiniteness of the beneficiaries is

characteristic. *Russell v. Allen*, 107 U. S. 163; *In re Graham's Estate*, 63 Cal. A. 41; 218 Pac. 84. If and when petitioner receives compensation from this trust for the operation of the trust's school, another and different tax question arises. [20]

It is true that the title as taken by this petitioner to the real estate was by an absolute transfer and not one expressing a trust. However, the rule appears clear in California that in the case of such a transfer, whether of real or personal property, if made with the understanding on the part of the grantee of the property that it will be held in trust for definite private purposes, and such understanding or agreement is the consideration for the transfer, its use for any purpose other than that agreed upon will be restrained by a court of equity under a constructive trust declared. *Cooney v. Glynn*, 157 Cal. 583; 108 Pac. 506; *Lauricella v. Lauricella*, 118 Pac. 430; *Hayne v. Hermann*, 97 Cal. 259; 32 Pac. 171; *Simons v. Bedell*, 122 Cal. 341; 55 Pac. 3; *Brison v. Brison*, 75 Cal. 525; 17 Pac. 689; *Adam v. Lambard*, 80 Cal. 426; 22 Pac. 180; *Alaniz v. Casenave*, 91 Cal. 43; 27 Pac. 521; *Hays v. Gloster*, 88 Cal. 560; 26 Pac. 367; *Butler v. Hyland*, 89 Cal. 575; 26 Pac. 1108. The same result would follow here where such agreement was to hold in trust for a public or charitable purpose. Political Code of California 1923, art. 8, secs. 470, 472; General Laws of California 1931, Acts 8698, 8699, 8700, 8701; *Long v. Union Trust Co.*, 272 Fed. 699; *affd.*, 280 Fed. 686. Thus, even if respondent were proceeding against this petitioner, as trustee, the fund, the sub-

ject of the pending deficiency, would probably be exempt under the Revenue Act of 1924, section 231 (6), *supra*.

Consequently, if petitioner attempted to distribute this property or fund to its stockholders or to devote it to any other purpose than that intended and clearly understood, it could have been restrained from doing so. *A fortiori*, it can not be held here that receipt of any part of this fund or property represented income to petitioner. *Freuler v. Helvering*, 291 U. S. 35.

Reviewed by the Board.

Decision will be entered for the petitioner.

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SEAWELL, dissenting: I am unable to agree with the conclusion reached by the Board under what appears to me to be the plain undisputed facts of this case.

In 1923 petitioner was a private corporation conducting a school for profit. What other powers and privileges it had do not appear, as its charter was not offered in evidence. It needed for the school more space and added facilities. The Rodeo Land & Water Co. owned 77.3 acres of land which it wished to sell. Petitioner did not need all of the land for the school and it did not have the capital to buy the whole tract. Some of its friends agreed to guarantee to a bank payment of certain loans it needed for money with [21] which to make certain advance payments on petitioner's contract to purchase the land. The Rodeo Land & Water Co. agreed to sell the land to petitioner. The loans

from the bank were never made and the guarantors were never liable for any sum on account of their agreement. A scheme was worked out whereby petitioner was enabled to purchase the land without outside aid. A Mr. Gilchrist, a friend of the school, a realtor, surveyed, platted, and subdivided the land. A contract was entered into by the Bank of America, designated as trustee, the Rodeo Land & Water Co., designated trustor, and petitioner, designated beneficiary, in which it was recited that the trustor had agreed to sell to the beneficiary said land for \$462,180, and that \$100,000 thereof had already been paid by the petitioner from advanced sales of lots. Petitioner was to pay the remainder of the purchase price from the sale of other portions of the land, and petitioner was to bear the expense of laying out and grading the streets, the installation of water mains, telephone and electric poles, and other development costs. The trustee itself made no payments and none of the guarantors or the trustee at that time or any time thereafter made any payment on the purchase price of the land. The land was placed in the hands of the trustee in order to secure the payment by the beneficiary to the trustor and to facilitate the transfer of title to lots sold by the beneficiary. The scheme was carried out. The trustee held the funds received from the sale of lots; paid the expenses of Gilchrist for making the subdivision; paid itself for the acceptance of the trust \$250 and certain percentages on the sale price of lots executed by it, and a closing fee of \$250 and paid and discharged the obligations of the petitioner, the beneficiary, to the Rodeo Land

& Water Co., the trustor; then the trustee quit-claimed the schoolhouse lot and other portions of the 77.3 acres and paid the profits on the sales, more than \$100,000, to the petitioner.

The property turned over to petitioner was not a gift and therefore is includable in gross income and section 213 (b) (3) of the Revenue Act of 1924, relied on by petitioner, is not applicable. The further provision of law, section 231 (6), relied on by petitioner, also is not applicable because the net earnings of petitioner inure to the benefit of the private shareholders of petitioner. [22]

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United States Board of Tax Appeals

Washington

Docket No. 47415.

BERKELEY HALL SCHOOL, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION.

Pursuant to the determination of the Board, as set forth in its report promulgated January 24, 1935, it is

ORDERED and DECIDED: That there is no deficiency for the fiscal year ending June 30, 1925.

Enter:

[Seal] (Signed) J. RUSSELL LEECH

Member.

[Entered]: Jan. 31, 1935. [23]



In the United States Circuit Court of Appeals  
for the Ninth Circuit.

B. T. A. No. 47415

GUY T. HELVERING, Commissioner of Internal  
Revenue,

Petitioner,

vs.

BERKELEY HALL SCHOOL, INC.,

Respondent.

PETITION FOR REVIEW AND ASSIGN-  
MENTS OF ERROR.

To the Honorable Judges of the United States Cir-  
cuit Court of Appeals for the Ninth Circuit:

COMES NOW Guy T. Helvering, Commissioner  
of Internal Revenue, by his attorneys, Frank J.  
Wideman, Assistant Attorney General, Robert H.  
Jackson, Assistant General Counsel for the Bureau  
of Internal Revenue, and Charles P. Reilly, Special  
Attorney, in the office of the Assistant General  
Counsel for the Bureau of Internal Revenue, and  
respectfully shows:

I.

That the petitioner on review (hereinafter called  
the Commissioner) is the duly qualified and acting  
Commissioner of Internal Revenue of the United  
States and holds his office by [24] virtue of the  
laws thereof; that the respondent on review, Ber-

keley Hall School, Incorporated, (hereinafter called the taxpayer) is a corporation organized and doing business in the State of California, and for the taxable year herein involved filed its income tax return in the office of the Collector of Internal Revenue located Los Angeles, California, which is within the jurisdiction of this Court.

## II.

That the nature of the controversy is as follows:

The taxpayer is a private corporation which is owned and operated by three individuals. Its business is the maintenance and operation of a private school for children whose parents are Christian Scientists. In 1923 the stockholders were contemplating closing the school because of the lack of adequate recreation facilities. The parents of the children, however, were intensely interested in its continuance and sought ways and means to prevent its closing. A meeting was called, attended by some sixty parents, at which the matter was discussed, and it was determined to study the situation with a view to working out some plan to insure the continued operation and maintenance of a school of the character desired.

The plan finally adopted was one suggested by a Mr. Gilchrist, a real estate operator and the parent of one of the pupils. Under the plan arrangements were made for the purchase of a 77.3 acre tract of land from the Rodeo Land & Water Company for \$462,180.00, with an initial payment of \$100,000.00

to be made upon execution of the [25] conveyance and the balance to be paid at stated intervals. The land was to be subdivided into residential lots and sold at a profit, with the exception of a seven acre tract which was to be retained as a site for a new school to be erected out of the profits from the sale of the lots. The Bank of America of Los Angeles agreed to loan the initial payment and to act as trustee for the purpose of taking title to the land, executing conveyances to lot purchasers, collecting the proceeds of sales and paying the development costs and the several payments to be made to the Rodeo Land & Water Company. In making the initial payment the bank was to be protected by the individual guarantee of the parents. It developed, however, that many lots were contracted for in advance and that no loan by the bank and no guarantee by the parents was necessary as the down payment on the lots contracted for was sufficient to meet all payments required.

Pursuant to the plan the deed executed by the Rodeo Land & Water Company designated the bank as trustee and the Berkeley Hall School, Incorporated, as beneficiary. All of the lots were sold within a short time and the profit realized in the fiscal year 1925 was \$111,883.88. The trustee quit-claimed the seven acres to the taxpayer and paid over the fund, representing the profit on the sale of the lots, to the taxpayer. [26]

The taxpayer did not include any part of the \$111,883.88 profit on the sale of the lots in its return

for the fiscal year 1925. Under date of September 18, 1928 the trustees exercised the option provided in Section 704 (b) of the Revenue Act of 1928 and gave notice of its election to have the income of the trust taxed to the beneficiary for the years 1924 to 1927, inclusive. The Commissioner added the profit on the sale of the lots amounting to \$111,883.88 to the income reported by the taxpayer for the fiscal year 1925 and mailed to the taxpayer a notice of deficiency in tax arising from said addition to its income, as provided by law.

In due course the taxpayer filed an appeal from the determination of the Commissioner and prosecuted said appeal to hearing before the United States Board of Tax Appeals. Thereafter, the said Board rendered an opinion holding that the profit of \$111,883.88 on the sale of the lots did not constitute taxable income to the Berkeley Hall School, Incorporated. In due course, on January 31, 1935, the said Board entered its decision pursuant to and in accordance with its opinion.

The Commissioner being aggrieved by said opinion and decision of the United States Board of Tax Appeals, desires a review thereof in accordance with the statutes in such cases made and provided, by the Circuit Court of Appeals of the United States for the Ninth Circuit, in which power of such review is vested. [27]

### III.

The Commissioner as a basis for such review assigns the following errors:

1. The Board erred in holding and deciding that there is no deficiency in income taxes due from this taxpayer for the fiscal year 1925.

2. The Board erred in failing to hold that the net proceeds from the sale of the lots, amounting to \$111,883.88 was taxable income to Berkeley Hall School, Incorporated, for the fiscal year 1925.

3. The Board erred in failing to find a deficiency in tax of \$12,021.99 due from the taxpayer for the fiscal year 1925.

4. The Board erred in failing to sustain the determination of the Commissioner.

5. The Board erred in finding that it was thoroughly understood by all interested parties that when the taxpayer should receive the plot of ground and the net proceeds from the sale of the lots it would receive these things not for its own use and benefit, but in a fiduciary capacity only. [28]

6. The Board erred in finding that the fund derived from the sale of the lots represents the voluntary contribution of the organization of parents of students at the taxpayer's school, there being no substantial evidence to support such conclusion.

7. The Board erred in finding that the only consideration passing from the taxpayer for its receipt of the disputed funds and the real estate was the taxpayer's agreement to accept them in accordance with the plan of the parents to estab-

lish and maintain perpetuity a school for children under the influence of the Christian Science faith, there being no substantial evidence to support such conclusion.

8. The Board erred in holding that the term "beneficiary" as used in Section 704(b) of the Revenue Act of 1928 does not include the taxpayer on the present record.

9. The Board erred in holding that the taxpayer never treated the fund or property as its own, and did not receive either of them for use in its individual corporate purposes, there being no substantial evidence to support such conclusion.

10. The Board erred in holding that all of the taxpayer's disclosed actions indicate an understanding on its part that its receipt and holding of the fund and property were not in its individual corporate capacity, but as trustee of a trust created for providing and perpetuating a school for children of students and friends of Christian Science, there being no substantial evidence to support such conclusion. [29]

11. The Board erred in holding that if the taxpayer attempted to devote the property or fund to any other purpose than that of providing and perpetuating a school for children of Christian Scientists it could have been restrained from doing so by a court of equity under a constructive trust declared.

12. The Board erred in holding that if the taxpayer attempted to devote the property or fund to any other purpose than that of providing and perpetuating a school for children of Christian Scientists it could have been restrained from doing so by a court of equity under a constructive trust declared, there being no substantial evidence to support such conclusion.

WHEREFORE, the Commissioner petitions that the opinion and decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, that a transcript of the record be prepared in accordance with the law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Signed) FRANK J. WIDEMAN  
Assistant Attorney General

(Signed) ROBERT H. JACKSON  
Assistant General Counsel  
for the Bureau of Internal  
Revenue.

CPR/mhk 4/13/35

Of Counsel:

CHARLES P. REILLY

Special Attorney, Office of the Assistant General Counsel for the Bureau of Internal Revenue. [30]

VERIFICATION OF PETITION  
FOR REVIEW.

United States of America  
District of Columbia—ss.

Charles P. Reilly, being duly sworn, says that he is a Special Attorney in the office of the Assistant General Counsel for the Bureau of Internal Revenue, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

(Signed) CHARLES P. REILLY

Sworn and subscribed to before me this 13th day of April, 1935.

(Signed) GEORGE W. KREIS

Notary Public.

My commission expires Nov. 16, 1937.

[Endorsed]: Filed Apr. 13, 1935. [31]



[Title of Court and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW

To:

Berkeley Hall School, Incorporated,  
300 North Swall Drive,  
Beverly Hills, California.

Ralph W. Smith, Esq.,  
819 Title Insurance Building,  
Los Angeles, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 13th day of April, 1935, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 13th day of April, 1935.

(Signed) ROBERT H. JACKSON

Assistant General Counsel for the  
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein,

is hereby acknowledged this 17 day of April, 1935.

(Sd) LEILA L. COOPER

Respondent on review.

(Sd) RALPH W. SMITH

Attorney for respondent on review.

[Endorsed]: Filed Apr. 22, 1935. [32]

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[Title of Court and Cause.]

### STATEMENT OF EVIDENCE.

This cause was heard by the Honorable J. Russell Leech, Member of the United States Board of Tax Appeals, at Long Beach, California, on September 26 and 27, 1933. Ralph W. Smith, Esq., and Girard F. Baker, Esq., appeared for the taxpayer, and C. H. Curl, Esq., Special Attorney, in the Office of the Assistant General Counsel for the Bureau of Internal Revenue, appeared for the Commissioner.

The evidence consists of the oral testimony of several witnesses called on behalf of the taxpayer, together with documentary evidence introduced by both sides.

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The testimony of

EDWARD D. WILLIAMS,

in narrative form, was as follows:

My name is Edward D. Williams. I reside in Beverly Hills. I have resided in Beverly Hills or in

(Testimony of Edward D. Williams.)

Los Angeles approximately nineteen years. My business is insurance. I am familiar with an organization known as the Berkeley Hall School.

I first became familiar with the institution in 1919, or 1918 perhaps, under the circumstance that my boy was attending the school. It was a school for Christian Science parents, or people interested in Christian Science, who desired to have their children attend a school that had a [33] leaning towards that particular faith. The school was located at that time, on Third Avenue, or Fourth Avenue, in the West Adams District. In the early years, about 1919, the parents held a number of meetings, as the school facilities there seemed to be very much limited, with a view to acquiring property so that the school might be enlarged and perhaps moved to another location. In 1922 or early in 1923 the parents of the children in the school held a number of meetings with a view to forming a committee to look into various sites that might be available for school purposes.

As nearly as I can recall somewhere between forty and sixty parents attended those meetings. Early in 1923, at the meetings, a committee was appointed or agreed to by the various parents, for the purpose of going about and seeing what property might be acquired that would be suitable for school purposes at various locations. They reported back at a number of the meetings that it seemed that the more desirable property was available out in

(Testimony of Edward D. Williams.)

the newer section of Wilshire, out toward Beverly Hills.

We negotiated jointly for the purchase of—in fact there were two, as I recall it now. The first report dealt with one piece of property that proved to be unsuitable and then all seemed to have agreed on another piece of property in Beverly Hills, the property that is now known as the Berkeley Square property. That is where the school is now located. It was ultimately acquired and the school was moved there. There were two agreements as I recall. [34]

(The witness was shown a document.)

I have seen the original of this before. That is my signature. I signed that about that time. The body of the instrument is dated May 1, 1923. The other signatures that appear on there were all entered at that time at the meeting we had. They were parents of the children who were attending the school.

(The document was offered in evidence and objected to as immaterial and irrelevant.)

This (document) was necessary—my recollection now of the conditions surrounding that is the school, or the young ladies in back of the school, did not possess sufficient wealth with which to go to the Rodeo Land Company and purchase any property for school purposes. Hence the parents all combined and presented, through that document there, the fact that they would, as parents, purchase that property and they all so obligated themselves.

(Testimony of Edward D. Williams.)

In that connection, after my signature, you will find an amount of \$1,000.00, which represented the obligation that I was willing to assume on behalf of my child going to school, incident to the purchase of that property.

(Thereupon the document in question was admitted in evidence as petitioner's Exhibit No. 1 over objection of respondent.)

I did not, in a direct way, play any part in the acquisition of any of the property that was ultimately purchased from the Rodeo Land and Water Company. That was handled through the Chairman of the Committee. I bought two lots out there. The purpose of acquiring that tract was to subdivide it in such a manner as to provide for the use of the school a certain number of acres on which the school [35] buildings were to be erected. The subdivision was also to include a certain amount of money to go towards the erection of those buildings, so that I bought two lots to reduce it down, in the tract at Doheney and Dayton. That is the particular tract that was acquired for the purpose.

The price of my lots included the necessary subdivision work and any other expense incident to the subdivision, and also a proportion which would make up to the extent of my purchase, the desire that I had to convey to the school.

I purchased two lots in order that I might assist in the perpetuation of that school, which had no means of perpetuating itself. The tract was sub-

(Testimony of Edward D. Williams.)

divided and a price put on each lot leaving a certain amount of acreage for the school. The arrangements by which these lots were purchased and the price put on each were not, to my knowledge, ever put in writing nor made the subject of minutes by the organization of parents. There may have been a secretary at the meetings; I cannot say definitely. I think the representatives of the Berkeley Hall School, the Misses Cooper or Miss Stevens, were present at these meetings, but I am not positive. There were discussions at the meetings to the effect that what money might be derived from the sale of these lots was to go for the erection of a school and the donation of property for school purposes. That was in perpetuity. I had no knowledge that the Berkeley Hall School was a private business corporation, and was not interested. [36]

The plan was to divide the lots in such a manner that the division would create a certain amount of property for school purposes. That was to be given together with any cash surplus that might exist through the sale of the lots. The property was for perpetuation purposes, to continue the school for children of Christian Science parents. That was the purpose of the guarantee which was signed.

The meetings I attended, so far as I can recall, were in 1919. At the meetings we discussed the advisability of acquiring property for school purposes. My thought is that we people on the guar-

(Testimony of Edward D. Williams.)

antee did acquire property. I feel I did buy property because I placed my signature to that form with a limitation on it. I do not know whether it was ever presented to the Rodeo Land Company. I do not know actually whether the contract, or guarantee, was ever taken up there or used. I did not personally take it up there. My thought is that it was taken up there, and my understanding is that it was. I got the understanding from the meetings that we held.

The money for the two lots I bought was paid to one of the Cooper girls. The Cooper girls did not directly have anything to do with the meetings except perhaps to answer inquiries that might have come up. The Cooper girls are the ladies that were running the school that was located on Third Avenue and they are the same ladies that are running it now in Beverly Hills.

I had no reason to know whether they were operating as a partnership, or corporation, or what. I thought I was giving my thousand dollars for the perpetuation of that school, whatever it might be. [37] It was not my understanding that I was paying the thousand dollars in advance on my lot. I did not get a lot for that thousand dollars. I did pay money for two lots after the property was subdivided. I did not exactly know anything about what the arrangements were that were made with the Rodeo Land Company about buying this. I have an idea at the various meetings it was brought out

(Testimony of Edward D. Williams.)

that the Rodeo Land Company would have to have some evidence of responsibility. Evidently the school lacked that responsibility. Hence the parents furnished it through the signatures to that particular form. I do not recall whether that organization tried to borrow the money at the bank or make arrangements at the bank on the guarantee. About the arrangements that were made with the Rodeo Land Company as to how we should buy this land I only know that some arrangement was made. What the details were I do not know. I still have the two lots. I do not know whether I could have sold them at a profit.

My object in guaranteeing the money was because I wanted to perpetuate the school though I did not care whether it was in Beverly Hills or some place else. As to the running of the school my thought was not in any way connected with any church. I did not know who owned the school, whether it was privately owned, corporately owned, or by the church. I do not recall whether the plan discussed at these meetings of parents friendly to the Christian Science faith were ever made effective by any writing at any time. I did not put up a thousand dollars. I guaranteed to put it up should such action [38] become necessary. It was not necessary to put it up. (The Board Member stated he understood the witness to say he had put up \$1,000.00.) No, I signed the agreement evidencing my obligation through that agreement to the Rodeo



(Testimony of Edward D. Williams.)

Land and Water Company to the extent of \$1,000.00, which I felt was the limit of my liability should this proposed arrangement not go through, and I understood that I was obligating myself to that extent, on the property they had under consideration.

The meetings I referred to were in 1922 or 1923. I am not changing my testimony to 1922 or 1923. I said that I thought the meetings started about 1919, to the best of my knowledge. I do not remember the individual years.

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The testimony of

A. L. MARKWELL,

in narrative form, was as follows:

My name is A. L. Markwell. I have resided in this city since 1906 and have been in business here all that time. I became acquainted with the Berkeley Hall School in 1911. I am a member of the Christian Science church as is Mr. Williamson who preceded me. I had one child in the Berkeley Hall School in 1922 or 1923. He started, I think, in 1911 or 1912 and continued until through the eighth grade, or whenever that was finished. I did have transactions in relation to the acquisition of a new school site for Berkeley Hall School in 1922 or 1923. The occasion or reason for that was a lot of us parents wanted to provide grounds or buildings for the

(Testimony of A. L. Markwell.)

school to use and make it perpetual, and we discussed various ways, [39] and finally decided on buying the tract of land and selling and subdividing it, selling the lots for enough to pay for the land and leaving this acreage needed by the school free, and also to provide a little money to put up the building.

We had several meetings and secured an option or a contract from the Rodeo Land and Water Company through Mr. Meline, to purchase the tract bounded by Robertson Boulevard and Wilshire and Doheny and the car line. Before they would go into it they—Mr. Meline said I believe—had to have \$125,000.00, or something like that, guaranteed as a first payment. So a number of us signed that guarantee up to \$125,000.00. I think I signed up for \$10,000.00. We guaranteed to pay the amount and forfeit it if we did not go through with the deal, is my understanding.

(The witness was shown Petitioner's Exhibit No. 1.)

Yes, this is the guarantee to which I refer, showing the amount was \$135,000.00. Mr. Meline was the sales agent of the Rodeo Land and Water Company. He represented them in selling their land. I personally discussed it with Mr. Meline, I think, over the phone.

As to the action taken on the guarantee, well, the land was purchased, and subdivided, streets were put in and lots sold, and I bought one of the lots.

(Testimony of A. L. Markwell.)

The prices on the lots were made high enough to cover the purchase of the land, including the land for the school and also to cover the street work and leave some money to build the buildings with.

(Counsel for respondent asked that the foregoing be stricken on the ground that a written contract states what was to be done. The objection was overruled.) [40]

That is what we intended, to give the property to the school. As to the list of names on this guarantee, I think we figured at the time there was easily \$2,000,000.00 back of the signatures. I am referring to petitioner's Exhibit No. 1.

I do not know whether this guarantee was ever delivered to the Rodeo people or not. I do not know what happened to the guarantee after I signed it; only that I bought a lot. I was not on the committee that purchased this land and arranged for the declaration of trust and had nothing to do with that end of it other than talking to Mr. Meline, I think, over the telephone.

As to the substance of that talk over the telephone with Mr. Meline, well, in substance, that we wanted to get the land and to do what he could to put the deal through. He was in favor of the school himself. The parents of the children in the school who had signed the guarantee wanted to get the land. I do not recall whether anything was said about the guarantee at that time. I think I told him there was

(Testimony of Eugene Swarzwald.)

enough on there to make good that \$120,000.00, if they fell down on it. The wealth of the parents who had signed the guarantee was sufficient to make good the \$135,000.00. That was in 1922 or 1923, just before the transaction was consummated. [41]

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The testimony of

EUGENE SWARZWALD,

in narrative form, was as follows:

My name is Eugene Swarzwald. I have resided in Los Angeles about sixteen years. I am a Christian Scientist. I had children in the Berkeley Hall School during 1922 and 1923. I am familiar with the circumstances of the acquisition of the new school in Beverly Hills.

As to the meetings I attended and what took place, well, the beginning was Mr. Gilchrist who had a child attending Berkeley Hall School had a discussion with me to the effect that this school should move out further West. We lived in Beverly Hills and we discussed the idea of forming a syndicate of the parents and getting a piece of property sufficiently large . . . Mr. Gilchrist was a subdivider . . . and his proposition to me was that the lots could be sold in sufficient numbers to return enough money to make the school a gift of seven or ten acres of ground. So I helped work out the plans with Mr. Gilchrist which resulted in a meeting of parents. This syndicate was formed

(Testimony of Eugene Swarzwald.)

and we finally acquired this 77 acres, the property that has been described.

There were three or four meetings of the parents. There were instruments or papers signed by the parents in relation to this matter.

(The witness was shown a photostat of a document bearing the date of April 11, 1923 which photostat was subsequently admitted in evidence as petitioner's Exhibit No. 2 over respondent's objection) [42] This guarantee was signed by the parents whose names appear there. I signed it as the first man. It shows that the sum of \$250,000.00 was guaranteed on the purchase of a tract. This guarantee of April 11, 1923 was shown to the Rodeo Land and Water Company as evidence as to our ability to finance that 77 acres.

(The document was offered in evidence but was objected to on the ground that it is not an original and not signed by anybody. The objection was sustained at this time, but the document was subsequently admitted in evidence as petitioner's Exhibit No. 2)

(The witness was shown petitioner's Exhibit No. 1).

I think I saw the original of this. I do not recall what, if anything, was done in relation to it. The only recollection I have was that the original group of signers was presented to the Rodeo Land and Water Company to help obtain the property which later was subdivided. I helped work out the plan

(Testimony of Eugene Swarzwald.)

and I helped them get the original land, the 77 acres. I was not on any special committee, I do not think there was any special committee. Mr. Gilchrist seemed to engineer the whole thing individually. I went to the Rodeo Land and Water Company alone and talked with Mr. Meline. I cannot say whether the guarantee, which is petitioner's Exhibit No. 1, was exhibited to the Rodeo Land and Water Company or to Mr. Meline, or to both. I know one was exhibited to Mr. Green, the head of the Rodeo Land and Water Company, but which one it was I cannot say at this moment. [43]

(At this point the document bearing date of April 13, 1923 was marked for identification as petitioner's Exhibit No. 2, for identification. This is the same document which was later admitted as petitioner's Exhibit No. 2.)

I did sign a guarantee with other parents of children in the Berkeley Hall School about the year 1923 or thereabouts, I would say within three months before the closing of the transaction with the Rodeo Land and Water Company. The guarantee I signed was used as evidence to show the ability of the parents that formed a syndicate to assure the Rodeo Land and Water Company that the property would be paid for.

(Petitioner's Exhibit No. 2 for identification was again shown to the witness).

This appears to be a copy of that guarantee. I signed the original of this instrument. To the best

(Testimony of Eugene Swarzwald.)

of my knowledge it was also signed by the other parties or parents whose names appear thereon. They were parents in Berkeley Hall School and are Christian Scientists or interested in Christian Science and giving their children the school's teaching or in Christian Science atmosphere.

After the signing of this guarantee Mr. Gilchrist immediately subdivided the property. The property was acquired by Mr. Gilchrist who seemed to handle the whole situation. He represented the syndicate, that is, the parents. [44]

He called a mass meeting of the parents and gave them the privilege of selecting lots from the maps. We all stood in line and selected lots in accordance with our signatures on the list. The person who signed the list first, as guarantor, had the first selection of the lots in that 77 acres. Several blocks were on Wilshire Boulevard, which made that more desirable than other sections, and it was understood that the lots would be sold at cost, which would include the actual necessary expenses in order to free and give clear the approximately 7 to 10 acres to the school, and whatever they would have left over. So the parents who signed this document lined up at a meeting and I remember distinctly that one of the three signers were not there, and that I selected the second one and picked the corner of, at that time, Preuss Road and Wilshire Boulevard. Then after all the parents selected, they had the privilege of selecting more lots and in those

(Testimony of Eugene Swarzwald.)

days of real estate activities we were rather generous in buying lots. Then friends were induced. I induced several of my associates in business to buy lots in that tract, with the result that the entire tract was sold out by Mr. Gilchrist on that plan. Preuss Road is now known as Robertson Boulevard.

I do not know that the school played any part in the acquisition of this property. Their premises were used for one or two of the meetings. The principals in the transaction were practically one man, Mr. Gilchrist, and I presume I came next to him representing the group of parents. There were three or four that were rather active, [45] Mr. Markwell, and Mr. Rosenthal, and one or two others.

In relation to the future of the property and the future of the school, well, it would be said it would be nice if we could have a school that would be perpetuated and organized similar to perhaps, Principia, at St. Louis. Principia is a school that caters to the children of Christian Scientists. The Christian Science Church has no school as a movement. The Berkeley Hall School prior to that time was operated along those lines, to the best of our understanding.

The Berkeley Hall School did not put any money into this transaction that I know of. I did not know at that time whether Berkeley Hall School was a private business corporation. It was my understanding that the property was to be made a sort



(Testimony of Eugene Swarzwald.)

of a trust so that the school could continue indefinitely in relation to this property.

(The witness was shown a document dated June 1, 1923, being Trust No. 109, which document was later received in evidence as joint Exhibit A-1).

I am not familiar with this. I think I know why the name Berkeley Hall School was used in these transactions. It was made plain from the beginning that the project was to help the Berkeley Hall School and it was not a money making proposition; no one was supposed to receive commissions on the sale of the property. I understood, Mr. Gilchrist was to do it at its actual cost, and the reason the Berkeley Hall School was used was to enlist the hearty cooperation of the parents and their friends to get in back [46] of the selling of the lots, for the purpose of clearing off these seven or ten acres for them. Our entire object was to make this land a gift to the school. And it was started when we signed this as signers. We did not know that we were going to actually buy lots. We knew we were participating, but the intention was to raise enough money on the tract to pay for the tract and clear off this property and help the school. That is the reason the Berkeley Hall School name was used.

I was never called on to make good in any way on the guarantee I signed. I know of my own knowledge that that guarantee was used, that form that I signed. Two forms were signed I believe. One of them were used to my knowledge. I do not know

(Testimony of Eugene Swarzwald.)

whether the guarantee, which is Exhibit No. 1, was ever used. There was one previous to that that was used. I do not know why this one was drawn. I never was called on in any way to make good on any of the guarantees, it was unnecessary to. I did not advance money on my lot when we got ready to purchase this land. I did not advance any money, not for lots. I did not pay any in at all. By virtue to my signature to that guarantee I was given the first right to choose lots, so I got the first or second choice. I kept some of the property and sold some of it at a large profit. I did not say that Mr. Gilchrist was to do all this work for nothing. I said that he sold it without profit to himself. I understood whatever commission Mr. Gilchrist received was supposed to be his actual cost. We people in the church did not do most of the [47] selling, we did part of it. I do not know what Mr. Gilchrist's commission was, I know he got a commission and I know he had certain costs. He had his office expense to take care of. I do not think he represented the Rodeo people, he represented himself. He was a real estate broker. I would say he acted as promoter and general——it was his organization that sold the lots.

I do not know whether these girls, operating under the name of Berkeley Hall School, was a private ownership or a corporation. As to how I figured that we were creating a trust, why, I intended to mean that we figured the school would be impersonalized, that one hundred years from now this

(Testimony of Eugene Swarzwald.)

school would still be established as the Berkeley Hall School. I did not look into the fact to see whether I was making this gift to a corporation or an individual or a church, because we had implicit confidence in these people. I do not know that I had implicit confidence in a corporation instead of the people, I did not know whether it was a corporation or what it was. It is a fact that I did not stop to inquire as to whether I was doing these things for an individual or a corporation. When we signed this we were very much concerned. We owned our home in Beverly Hills, and we said at the time if this does not work out successfully we may lose our home, but it happened to be at such a time that real estate was on the upward trend and we were fortunate enough to dispose of the property. Some, however, I still have and I would be very glad to sell it for half of what I paid for it. [48]

I am aware of the fact that a lot of these people paid for these lots in advance and that is the way the money was raised to make the first payment. We guaranteed the Rodeo Land and Water Company that those lots would be paid for, and they insisted that they were to be subdivided and sold. That plan was all worked out in advance. We expected to realize the money that way. There were hundreds and hundreds of lots. 77 acres is a pretty good sized property and would make a lot of lots. Yes, we were so fortunate that we actually sold enough lots in advance of the time when we had

(Testimony of Eugene Swarzwald.)

to make the first payment that we had the first payment from advance sales.

My obligation, this guarantee that the parents had signed of that \$250,000, was there just the same. They sold enough lots to meet the payments as they matured. The Berkeley Hall School is still running the property that the parents acquired for it.

As to whether the sum of \$10,000.00 was paid to bind the bargain in the acquisition of this property, yes, I think it was.

(A document containing a list of names with amounts after them was passed to the witness.)

Yes, I recall that transaction. I think Mr. Gilchrist handled it as a part of the deposit. I think there was a deposit made. I think I advanced about \$500.00 towards making up the deposit, the required deposit, but no obligation whatever to purchase lots. It was earnest money. Earnest money for the consummation of the transaction between the Rodeo Land and Water Company and the parents of the school. I am quite positive that I did put [49] up that \$500.00. No, it was not credited to me on my lot. Yes, I did get it back. Yes, it was all paid back, but it was not credited on the lot.

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The testimony of

FRANK F. HILL,

in narrative form, was as follows:

My name is Frank F. Hill. I am a resident of Los Angeles. I have been in Los Angeles practically

(Testimony of Frank F. Hill.)

all the time since 1899. I am in the oil business. I am an officer of the Union Oil Company. I had one son in the Berkeley Hall School, probably along in 1922 or 1921, and another daughter coming up, but was not quite of school age at that time. In relation to the promotion or development of Berkeley Hall School in 1922 or 1923, a number of meetings were called, in which the parents attended, and as I recall it, there were committees or, a committee, appointed to investigate and devise means to expand the school and perpetuate it as an institution where Christian Science parents could send **their children**; and out of that came the purchase of a number of acres of land. I believe it has been testified to there were 77 acres selected out in Wilshire near Beverly, and a portion of that land was subdivided and sold off in town lots, and there was a portion of it set aside for the use of the school.

(A document was passed to the witness.)

Yes, that is my name. Yes, I signed such a document. I did sign the guarantee, two guarantees, as I recall it.

(Petitioner's Exhibit No. 1 was passed to the witness.) [50]

That is my signature, the third name on the list. As to when I signed it, I see the document is dated May 1, 1923. The guarantee was signed by a number of other people who were interested in the welfare of the school, the extending of it and the perpetuating of it, for the purpose of showing to the

(Testimony of Frank F. Hill.)

Rodeo Land Company the ability of the parents to support the school financially, to the end that this deal might be made. I signed it for the purpose of lending my aid in putting through a deal to secure some additional lands and funds to move and build a new school for the Berkeley Hall School, and I signed the paper as an evidence of my faith, and guaranteeing that I would support such a movement.

As to whether the Berkeley Hall School is a private institution or a corporation, I did not know the exact status of it, so far as its legal existence was concerned, until I heard it stated here today that it was a corporation. I had not known that before, if that is true. As to the form of organization I thought I was backing, it was my understanding that there were no schools attached directly to the Christian Science Church, and that we were perpetuating a school that had already been established, to which Christian Science children were admitted and that we were giving this land, or assisting in securing this land and these funds, to build an additional school for the purpose of perpetuating Berkeley Hall School, which I understood was to be used for Christian Science children.

[51]

I paid tuition for my children, it is not a free school in any way.

It was agreed by some committee, I guess, that the guarantors would be given first choice in picking

(Testimony of Frank F. Hill.)

lots in relation to the way in which their signatures appeared on the document. As to who handled this proposition and who had authority to sign it for them and enter into an agreement with the Rodeo Land and Water Company, I do not think I can answer that. My discussions largely were with Mr. Markwell and Mr. Gilchrist, and I think Mr. Rosenthal and two or three others that I cannot recall their names. We attended a number of meetings, but I do not just know the authority that was given these people. I had nothing to do with that end of it.

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#### EUGENE SWARZWALD

was recalled to the witness stand. His testimony, in narrative form, was as follows:

As to the earnest money which I testified was paid to the Rodeo Land and Water Company, I think it was \$10,000.00.

(Petitioner's Exhibit No. 2 for identification was passed to the witness.)

The \$10,000.00 was paid after we signed this original document that the syndicate signed on which my name appeared third. By the original document I mean the document that we referred to in the early part of the testimony, that guaranteed the amount of money that the 77 acres would be purchased for. That document, or a document guaranteeing the purchase price, was taken to the Rodeo Land and

(Testimony of Eugene Swarzwald.)

Water Company. My [52] name appeared on it. There was a small sum raised from those parents who signed this original syndicate document as earnest money for either an option or for the purpose of binding the contract.

(Thereupon a letter dated April 30, 1932 over the signature of Frank Meline was admitted in evidence as petitioner's Exhibit No. 3, and was passed to the witness).

I am familiar with this document, that is the \$10,000.00 to which I have just referred as being paid by the parents of the children of the Berkeley Hall School, as earnest money to bind the transaction.

I do not think the guarantee to which I affixed my signature was ever used after the payment of this money. It was used before, as evidence of faith in the ability of this syndicate to go through with the financial obligation in acquiring the 77 acres.

As to the last paragraph in petitioner's Exhibit No. 3 which reads: "In event satisfactory terms to both parties cannot be arranged within 8 days, then the \$10,000.00 earnest money paid by the Berkeley Hall School, Inc., shall be returned to them", I know that satisfactory terms were arranged within eight days. The statement that the earnest money paid by the Berkeley Hall School shall be returned to them, was placed in there for the reason that the property was to be known as the Berkeley Hall



(Testimony of Eugene Swarzwald.)

School project. [53] None of this \$10,000.00 came from the Berkeley Hall School to my knowledge. To the best of my knowledge it all came from the parents. The \$500.00 I advanced was returned to me.

By the syndicate of which I speak I mean the group of parents. That is what I call a syndicate. We did not have any organization organizing ourselves into a syndicate, just a brotherly group. It had nothing to do with the church. A syndicate in my opinion, designated a group of persons with ability to do certain things financially. It was not organized as a corporation. We had no officers. We would telephone and meet just as officers would, if there were officers. To the best of my knowledge it is true that this \$10,000.00 was paid by the parents. I know what some of the others paid, but I do not know what all of them paid. I got my money back on this guarantee. I do not remember how long after, but it was not very long. The whole deal in a few months showed considerable progress. I think I gave this money to Mr. Gilchrist.

Petitioner's Exhibit No. 3 says that this money was received from the Berkeley Hall School. No, I would not like to change that letter now. I do not know how the money was received. I just go by what is on the letter. To me it is immaterial whether it was received from the Berkeley Hall School or from Mr. Gilchrist. Our syndicate, or parents, had no formal organization. The parents formed an in-

(Testimony of Eugene Swarzwald.)

formal group. They had no legal status. We simply got together as a group of parents to help the Berkeley Hall School and we would not have gotten in back of it as we did if it [54] had not been a private enterprise. The only reason I can think of why the name Berkeley Hall School was used is that the Berkeley Hall School was established. It was known we were all interested in it. We had helped the school for years, financially and otherwise, and it was just an established entity.

If it had been a real estate promotion project we would not have done it as we did, in the way that we did it. We would not have gotten back of it the way that we did. I knew we were assisting a private institution, but we did not know we were going to make money out of it. In other words, we were not in the real estate business. We were of the opinion that we would make a profit. We expected to make enough out of it to build a school, but not to make a personal profit. We did not know that we were going to make a personal profit. We figured it out that we could give the school this acreage and help them eventually to move from their location to Beverly Hills, and that was our intention and our hope. Our object was not to make money on the purchase of these lots personally, although we did. [55]

The testimony of

LEILA L. COOPER,

in narrative form, was as follows:

My name is Leila L. Cooper. I reside in Beverly Hills. I have resided in Los Angeles and Beverly Hills about thirty years. During that time my profession has been teaching school. I am one of the founders and originators, principal, teacher and later president of Berkeley Hall School, Incorporated.

It was organized in 1911 as a private school. We had about 20 enrollments, 3 teachers. In 1912 we moved to Fourth Avenue. We found a place there that we paid \$1,000 down and took \$9,000 in mortgage notes. It was just a residence, and we erected temporary portable buildings on the lots, and acquired several adjacent lots. We made three moves, Western Avenue first, and then Fourth Avenue in the City of Los Angeles, then from Fourth Avenue we moved to Beverly Hills. The Fourth Avenue School was an old house which was remodeled, and we erected portable bungalows for schoolrooms, temporary buildings. I think we had considered the value of the property in 1923 about \$25,000.00, and \$13,000.00 mortgage. \$12,000.00 was probably what we had in it. The buildings were badly depreciated at the time. After the war the adjacent land that we had used for play ground was built upon, and we were entirely surrounded with buildings. The principal and teachers in the school were Miss Mary Stevens, who was one of the officers of the Berkeley

(Testimony of Leila L. Cooper.)

Hall School since its organization, Mabel R. Cooper, who is my sister, and who [56] has been one of the officers since organization and myself. We three ladies have been the principal operators of the school and the owners of the corporation, and there is no stock except what is owned by us, and that has been the situation since its inception.

The school was incorporated in 1920 as a private educational institution. The acquisition of other property was prompted by the lack of playground, which was most urgent and we had to eliminate the older boys, from the sixth grade up, for lack of playground, and we should have had to have eliminated the girls of from perhaps the fourth grade up had we continued in that place. We could not have provided facilities for the older children.

We talked to the parents, many of them had helped us financially in small ways and knew that we could not, at the rate that property was increasing, hope to hold the school and acquire land; and as we talked with them about it, the suggestion came for the parents to get together and see what they could do.

They had several meetings just in a small group, Mr. Swarzwald and Mr. Markwell, who testified yesterday, being among those originally interested, and a few others who were interested temporarily. We talked about ways and means, and different committees were appointed, who went to different par-

(Testimony of Leila L. Cooper.)

ents, but it came back each time to the proposition of taking on interests. We had been struggling for so many years under that that we did not want to go [57] into the new project and bear the brunt of the interest, and we were at practically a standstill when one of our mothers came in and inquired—she had heard something of it. We had not asked her, nor her husband, because we did not know them. She went home that night and talked to her husband about it, and he was an experienced subdivider, and he came over the next morning and said we had one asset only, and that was the interest of our parents, which was a bankable asset. Of course, it seemed, as we said, too good to be true. We could not grasp it at that time, but we passed the word on to these other men, friends, who had been more closely interested, and they seemed to see the possibilities. And from that time on it went entirely into the hands of the parents.

They asked us to call the parents together, which we did, into a mass meeting. I would say 50 or 60 people came the first time, all of them were parents, and Mr. Swarzwald, I believe presided and he asked me to tell the parents what we had to do.

I gave a brief statement, and the fact that we had only one alternative, and that was to limit the school to the small children, and eventually to turn our property into income property or to have help in securing acreage and going out for a new school.

(Testimony of Leila L. Cooper.)

The support was beyond anything that we had expected, for we never had any occasion to know what the parents felt about the school. This was the first of three meetings. I believe then [58] that Mr. Swarzwald called on Mr. Gilchrist to tell, or he told, rather, in the beginning, of the plan that had been proposed.

There were many business men there who took it up immediately and offered to back it in any way they were needed.

The talk of another meeting was mentioned, and Mr. Caswell expected to be in San Francisco for two weeks, and he left a check of \$2,000.00 to be used in case of anything needed before he returned. No money was raised in the meeting. I was speaking of the first meeting, about April 1923.

Immediately after this was explained to the friends assembled, someone went to the office and typed this agreement, which was signed there in front of the room where there was a large desk spread out.

(Petitioner's Exhibit No. 2 for identification was passed to the witness).

Yes, I have seen an instrument similar to that. April 13th is the first signature. This was the agreement signed at that time. The original of this agreement we thought went to the Government, because it is marked as Exhibit and was sent some years ago. It was a long time before those papers got to us. It was either sent to the Government

(Testimony of Leila L. Cooper.)

or given to the bank when we first went to the bank. I have searched our records and could not find it. I think all of that came back to us, and we just put it in a book, in a box. We cannot find the original. The agreement was signed that evening [59] and copies were made so that different friends could take a copy to their friends to secure more signatures. That is the reason for the typed copies. We have a number of typed copies, and the names of those who signed that night were typed, and then the names are written on—perhaps on that one or some others, of the new names, that were secured by different people.

We went to the bank after the plan was outlined. Mr. Gilchrist asked me to go to the bank and see if the bank would consent to act in the capacity of trustee, I believe. Mr. Monett, Ora Monett, had been our friend in all of our school enterprises. He had arranged the mortgages for us each time. He was president of the Bank of America, and knew the history of the school as far as banking was concerned. We went to him, and he said he was glad and willing to do anything necessary. That was a preliminary hearing, I would say. Later we took the list to him and showed him the names on that guarantee, and told him the plan as it had grown to consummation. I think he knew many of the men on this guarantee himself.

Mr. Monett sent us then to the trust officer, who was Mr. J. Randall. Mr. Randall was a Christian

(Testimony of Leila L. Cooper.)

Scientist and said he was interested in helping in any way that he could. He was also interested in having the type of people that this would bring to the bank in their new organization.

We had to show Mr. Monett that we had something before he would send us to Mr. Randall, because Mr. Monett knew—we had [60] consulted him many times about buying tracts of land. He had taken them up with the different boards in the bank, and we had been refused, because we had nothing to show that we had any backing, except our feeling that possibly somebody would help us.

There were three of them that I know of. One was practically ready for signature, and was turned down by the bank. This was the first time that we had any tangible evidence that we had a financial backing among our parents.

The first plan was to obtain the loan from the bank for the down payment. There had been no other plan thought of at that time, except to borrow the money. We had asked Mr. Monett for loans. That was the only way we could secure property, was to have a loan of the money to make a down payment. Mr. Monett said we had no assets, that the bank could consider worth a loan, because we already had a \$13,000.00 mortgage on the property and it was not worth much more. We had to have a down payment on the land and we knew no way now of getting it, except through the bank. Mr. Monett



(Testimony of Leila L. Cooper.)

considered that the people who were back of this were sufficiently able to see the proposition through, anything that they would attempt. The amount of money, I think, was \$135,000.00. It was estimated it would take that amount to make a down payment on any property that would clear enough to give the school ten acres of land. As to whether there was a second guarantee of \$135,000.00 [61] entered into by the parents later I am not sure about the sum. They are stated on the different guarantees.

Mr. Randall was shown a list of guarantors, and he, of course, knew many of them and he said that he felt the plan was entirely feasible, and that he would accept those men as guarantors for anything that the bank was willing to loan. I did not have any other discussion with the bank or any other person of interest here, in relation to the guarantees, or either of them.

(A document was passed to the witness.)

Yes, Mr. Caswell's name is here. This is the \$2,000.00 that I spoke of that Mr. Caswell left. On one Friday in the last of April Mr. Gilchrist telephoned that he had secured or could secure an option on a most desirable tract of land North of Wilshire, if he could have \$10,000 by 12 o'clock, Monday morning. Mr. Caswell's check was with us, and we telephoned Mrs. Caswell, and she said she would try to get him by wire. She was not able to do this, because he was on his way between San Francisco and Los Angeles, and she telephoned

(Testimony of Leila L. Cooper.)

back that she knew the purpose for which he had left the check, and that she would leave it to our judgment. She hated to feel that it might be lost, but she could not withhold it, because she knew that he had left it to be used in an emergency. Mr. Payne, whose name is here, was also in San Francisco. The money was used for the payment. The people listed here were all parents or friends interested in the school or in Christian Science and as to the amount after their names, that money was taken to Mr. Meline at 12 o'clock—between 11 and 12 o'clock, Monday noon, to secure an option, an eight [62] day option for the sale of this Rodeo Land and Water farm tract. The sum is \$10,000.00. That was earnest money in relation to the acquisition of this property. The amounts set opposite to the names of these people is the money that came from them. It was advanced by them. They understood that the need might be—that there might not be time for a mass meeting. That had been talked of, and those people had signified their willingness to help when they were needed. Mr. Payne was in San Francisco, and had to be telegraphed, and he telegraphed permission for his wife to use his name. These individual people advanced this \$10,000.00. The Berkeley Hall School did not participate in this in any way. The officers or stockholders of the Berkeley Hall School did not advance any part of it. It is not in it in any way. These are all parents

(Testimony of Leila L. Cooper.)

of children in the school, or people directly interested in Christian Science.

(Petitioner's Exhibit No. 3 was passed to the witness.)

This is a letter signed by Mr. Meline wherein we were given eight days to arrive at terms. We were allowed eight days to raise the rest of the \$90,000.00. That afternoon after we had made the deposit of \$10,000.00, the land was subdivided on paper, in Mr. Gilchrist's office. The \$10,000.00 was paid to Mr. Meline by Mr. Gilchrist, who was agent for the parents, the one whom they had appointed to carry out the details. The Berkeley Hall School did not pay any part of the \$10,000.00 shown in this letter from Mr. Meline [63] which states at the top "Received of Berkeley Hall School, Inc., \$10,000.00." It was not funds of Berkeley Hall School. Berkeley Hall School had no funds.

In Mr. Gilchrist's office the land was subdivided on paper, and a blue print was made that night. The next day in his office the prices of the lots were put on them. There was something over 370 lots. On a Tuesday night the parents who had signed the original guarantee were invited to come to his office to select the lots in the order in which they had signed the first guarantee.

Yes, money was raised that first night, \$64,000.00 was subscribed by these original guarantors. Within the eight days allowed under Mr. Meline's letter

(Testimony of Leila L. Cooper.)

the \$100,000.00 was raised, by Saturday noon, I think. That was less than eight days. That was the first down payment to be made, of \$100,000.00, and that was raised from the sale of lots to the parents of the children of the school. And then after that the project was carried right on to consummation. Mr. Gilchrist fixed the prices per lot on the subdivided tract. He said it was a tremendous job to be done in one day, even with a trained office force, and at 6 o'clock that night he had priced it too high. Before the meeting he repriced it, and worked up until the time of 8 o'clock, when these people assembled at the office. We, the Berkeley Hall School, knew nothing about it until that evening. We, the three of us, the Berkeley Hall School, were not interested in subdividing the land or marketing the property. I did not have any funds myself other than invested in the school, and no private credit of any kind.

(List of parents and amounts they subscribed to make up the payment of \$10,000.00 admitted in evidence as petitioner's Exhibit No. 4.) [64]

Yes, there was a declaration of trust entered into with the bank in relation to this property and I signed it.

(A declaration of trust dated June 1, 1923, being Trust No. 109 with the Bank of America, received in evidence as Joint Exhibit A-1.)

Yes, there was a declaration of trust entered into with the Bank of America. As to whether we were

(Testimony of Leila L. Cooper.)

a party to the declaration of trust, we were to be the recipients of the land. It was through this instrument that the land was to be given to the Berkeley Hall School. As I understand it, there had to be some legal way of going at this subdivision, and we signed or did what we were told to do. The understanding was our only interest in it was we were to be given the land. The detail and the way in which it was to be done was far beyond my comprehension then, and it is now.

I did not know then what the instrument contains. There were only eight days, and this had to be executed seemingly in a very short time, and I merely followed Mr. Gilchrist's suggestions and signed what we were asked to sign. The Berkeley Hall School at no time bought this land. We did not enter into any transactions to buy it. We did not pay, as this instrument indicates on the bottom of page 1, the sum of \$100,000.00. We did not pay any part of it. Neither the Berkeley Hall School nor any of its stockholders paid any part of it. We did not have anything at that end of the year, but just enough to get us through the summer. We could not pay anything at all. The name Berkeley Hall School was used in here just as a matter of convenience. [65] There was nothing else to use that anyone knew anything about. It was merely a matter of some name having to be used in the document.

The Berkeley Hall School has never declared a dividend. We have received donations from time

(Testimony of Leila L. Cooper.)

to time from people. Since our first inception we have had small sums. These last few years they have been larger. In 1921, 1922 or 1923, the school was not operated at any profit, to speak of. The money went back into—we carried mortgages from the beginning. The money all went back into the school, to defray the interest,—and to take on more land as fast as we were able—for accommodations, I should say.

As to whether the school received money and acreage as the result of this transaction, it was in trust in the bank. The school never received it, except as it was transferred from one account to another. The accounts were kept in the bank in an entirely separate account from our own school account. This transaction never appeared upon our school books. As to whether the land has been transferred to the school from the bank, it was taken from the Bank of America to the Citizens First National Bank, and at that time it was not deemed advisable to continue the trust, because of the expense, so the deed was taken out and placed in the name of the school, when it was transferred from one bank to another. That was in 1927 or 1928. Up until the year 1927 or 1928 the Bank of America still had title to this land. It was in trust in the trust department of the bank under Mr. Randall. [66]

In 1925 we started the buildings, after the subdivision was complete. It was a year before the subdivision was complete. In 1925 we moved the

(Testimony of Leila L. Cooper.)

school, and the money that was in the bank was checked out to the architect from that fund, which had been placed in our checking account, transferred by the trust department to a checking account, for the building of the school building, and the grounds. Neither the Berkeley Hall School nor its officers or stockholders ever received any of this money for themselves.

The school is still operating. We have not at any time exercised dominion over the school property as owner. We are holding it in trust. That was our understanding from the beginning, that the property was to be held in trust and to be perpetuated.

Well, the entire intent of the operation was to secure grounds to perpetuate the school, so that it would not be a personally owned institution, and that has been the thing we have worked for all these years. Otherwise, it would have been—the property, had it been ours, if it would have been sold, would have been much easier for us to have sold, but it was not given to us personally, but to us to carry on the school for the children of these people who took entirely the financial responsibility. We have made efforts to have it perpetuated. Before we started the buildings, we called Douglas Edmunds. He was familiar with the entire operation, and he gave us several papers worked out in a way showing how this land might be perpetuated. At [67] that time there was this undecided case of putting the private schools below the high school out of existence. That

(Testimony of Leila L. Cooper.)

was later carried to the Supreme Court, but it was several years after this that that was eliminated from our problem. At this time Judge Edmunds said that the property, if the school was ever discontinued for any reason whatsoever, would go to the state. We felt that a group of Christian Scientists had done this for an educational purpose, and should the school be discontinued, the property or money in future years should go to the Church, or to some other similar institution.

After this we formed an advisory board, of which Douglas Edmunds was a member, and it was presented later to our Dads Club, which was an organization for helping in the business problems by advice to the school, and they formed—they authorized two lawyers, who were members of that committee to work out a deed, a deed of trust, in which the land might be perpetuated and the school continued indefinitely.

There was an effort made to deed the property to the Christian Science Church. Judge Edmunds went to Boston. He was then an employee or representative of the Christian Science Church in this field. He went to Boston, and we have had considerable correspondence with Mr. Norwood, who is the head of the Committee there that would have in charge donations of property, and the Church did not want to be a partnership in any school or any other business. If the property were sold and turned over to them, they would accept the money, but



(Testimony of Leila L. Cooper.)

not at this present state. The Christian Science Church had no way [68] of connecting itself with an educational institution and could not accept the property.

The deed to the property is now in trust in the Title Guarantee and Trust Company of this city. We have a board of seven members, counting ourselves, who are holding this land for perpetuation, and when the mortgage is lifted there is no further problem. We now have a mortgage on the property totaling \$123,000.00. That money was borrowed and put into buildings on the property. I refer to the land and buildings on the ground.

More than one site was considered in the spring of 1923. South of Wilshire was cheaper, and our first thought was for the land that was the cheaper section. And that was raised, and the other property was considered far more advantageous, but it was not on the market when we began the discussion. The officers and stockholders at the school had nothing to do with the selection of these sites. We were not considered at all in the matter of the selecting of the present site.

The Carthay Center site was considered in the very beginning, before we had the mass meetings, when we had just the small groups. Mr. Swarzwald went to the Hellman Bank for that.

(A document, purporting to be an enrollment application blank of the Berkeley Hall School, was passed to the witness.)

(Testimony of Leila L. Cooper.)

This is the form we require of the parents. The parents must be students of Christian Science, and we ask a recommendation of two practitioners, and the attendance of the child in a Christian [69] Science Sunday School before a student is accepted in the school. There are no other requirements.

The Berkeley Hall School did not install the water mains or make any improvements, or enter into any agreements in relation to the matter of the subdivision or marketing of this tract. Mr. Gilchrist handled that. Mr. Gilchrist was not our agent. He was appointed in the first meeting, at the first mass meeting, by the parents. He did all the selling of the lots. At the first meeting, when the plan was proposed, the parents said, "Who could carry it out?" And Mr. Gilchrist said he had done so much subdividing he hoped he would not have to do any more. Before the meeting was over he agreed to do this for the parents, as one of the parents, for a small fee, and he agreed there to that, to carry that entirely through to the subdivision, the water and everything that pertained to that subdivision. Mr. Gilchrist was appointed by them at the first meeting. Yes, they had authority to create him in that position. They had the authority of a group of people who had agreed upon a certain line of procedure. The authority to sign documents, and things of that kind was given to him that night—as to whether I think the authority can be transferred that way, well it was. When we, Miss Stevens, my

(Testimony of Leila L. Cooper.)

Sister and myself, first started the school back in 1911 we rented. At that time we had \$300.00. We started taking in Christian Science pupils and teaching them. We outgrew those quarters in two years. In 1920 when we organized the corporation Miss Stevens, Mabel Cooper and [70] myself each owned one-third of the stock. No one else owned any of the stock. We have on our books \$100.00 a month as salaries paid to each of us, but we have never taken it. From the beginning we have been buying more property and paying off mortgages with the income from them. Finally we come down to 1923, when we were about desperate and about to give up the school, and we told them if something was not done we were going to rent out our property and live on the income.

Under the first proposed plan we took these written guarantees to the bank for the purpose of borrowing the \$100,000.00 to make the down payment. We did not need to borrow that money from the bank after the option was obtained. The only money that was put up was this \$10,000.00 that a few of these parents put up and was paid as a binder on the option. The way that money was repaid to these men was that most of them bought lots, but not all of them. I do not know whether those who bought lots were given credit for the money they had paid in. Getting first choice on the lots was the reward which the guarantors got. The first signer getting

(Testimony of Leila L. Cooper.)

lot No. 1, was their reward. The guarantors, other than the men who put up the \$10,000.00 had agreed to put up money, but we did not use it, we did not need it. We did not sell more than enough lots before the eight days were over to raise more than \$100,000.00, the parents bought the lots for that purpose, for the purpose of raising money, not for any other purpose, however. We helped in every way that we could to sell the lots at that time. The purpose was to get together and sell the lots not only to the guarantors, but to the guarantors' friends. And we put it over and sold the lots within a very short while. [71]

I did not say I went down to the Bank of America to sign this trust agreement. I said I signed it. It was probably brought to us.

After the bank took over the handling of the matter our work in connection with it was to do only what we were asked to do. We were teaching school every day from 8 to 6. There was a plot at the school office for convenience, and Mrs. Gilchrist was there in charge.

As to the use we made of the signed guarantees, we had no way of getting to the trust officer of the bank without something to show. We used the trust officer, because it went into escrow in that trust. We did not need to borrow any money at all.

The money from the trust was in the hands of the bank and was put into a separate account, as

(Testimony of Leila L. Cooper.)

Mr. Gilchrist requested the money for the subdivision purposes. The \$38,000.00 was taken out on October 1st, for the beginning of the subdivision work. The money for the purposes of putting in the streets and the alleys and sewers and all those things had to be checked to the building and improvement fund, and then it had to be countersigned. The checks for these improvements were probably signed in the name of the Berkeley Hall School. We received a deed from the trust officer, or the Rodeo Land Company, whichever it was, for the land that was left. I have that deed.

(The witness examines a document.)

Yes, this is the deed which we received from the trust company, Bank of Italy. [72]

(The document is received in evidence as respondent's Exhibit A.)

This is the deed I referred to in my testimony of awhile ago when I said it was given to us in trust. I said I did not know whether all of the men who put up the \$10,000.00 bought lots. I do not remember now that all of them bought lots. Most of them, I know, did, because I have been in contact with them since. I do not remember whether or not I returned any of the money. It was before we built the buildings, in 1923 or 1924, that we consulted lawyers about placing this school property in trust or transferring it to the church. We sold the lots in the spring of 1923. There were still six months in the year. The down payment on all of the lots was made in 1923, but they were sold

(Testimony of Leila L. Cooper.)

on the installment plan. We started building the buildings in April, 1925. At that time sufficient money had been transferred to the account of the Berkeley Hall School to start the buildings. At that time we did not have the \$84,000.00 in cash that was turned over to us. There were three installments running over eighteen months. The money was not all in. I believe the lots were sold on three payments, six months each.

As to whether this lot was deeded to us clear of debts, there was a loan already taken out while the property was in trust, for the finishing of the original four buildings. The loan was taken out in the name of the Berkeley Hall School. I think the loan was \$50,000.00. We took out a loan of \$50,000.00, I believe. I do not [73] know whether we gave a trust deed on that property. It was in trust. I would be one of the signers to the papers for the Berkeley Hall School for that money. As to how long it was after that before we started to see whether or not we could place it in the church, that arrangement was carried on by an advisory board which met every month or six weeks for a period of years. I could not be sure of dates. It was a continuous—a board that was continuously on call and at every new development we had a meeting. As to who appointed the board, I would say that we helped to select them. Judge Edmunds was the one who had made the first attempt, and because of his position in the church work he was not able to go on with

(Testimony of Leila L. Cooper.)

the legal work. We did not know where else to go, and it was merely carried as the Advisory Committee work for a period of two or three years. They represented a group of people who were interested in carrying on what the first group of people started. These people were not lot buyers. There were three practioners, one architect and Judge Edmunds. They had not put any money in it. And none of the guarantors had put any money in it except for the purchase of lots. The trust sold all of these lots and made a profit of \$122,000.00. They turned over the property and \$80,000.00 to us. As to whether they made a profit of \$122,000.00 on the sale of these lots, well, I do not know. The records are all that I have for that. So all of the property had been paid for, including the lot which we got and they turned over to us what was left and we have used it to build buildings on the lot. The title at the present time is in the Title Guarantee and [74] Trust Company. I mean to say that the title now is held for this board of which we are members. We have a board of trustees. We three are members of that board and the property has been placed in the trust, Title Guarantee Company, I believe. That trust is not for the payment of money that we borrowed, it is there for perpetuation. Two or three years ago we started just at the time of this depression to ask our friends to complete the thing that they began, and that is to raise a mortgage and to put this land and buildings free

(Testimony of Leila L. Cooper.)

of all encumbrances for perpetuation. The mortgages have been or were upon the buildings that were being built.

The property was deeded to us. We borrowed money on the trust before it was deeded, while it was in trust in the Bank of America. The Bank of America loaned us money that way.

We have been attempting all the way through to place the property in hands to perpetuate the school, to find a way to do that. We have found the way now. As to whether we have done it, we could not.

The \$84,000.00 was in the bank until it was needed for subdivision. The subdivision work was all complete before we received anything. Whether it was all turned over to us at one time or was turned over from time to time, I do not know. The Berkeley Hall School checked the money out for expenses for the building fund.

As to my testimony that not any of the guarantors advanced any money except for the purchase of lots, they also advanced earnest money. That is \$10,000.00 was advanced by parents of children of Berkeley Hall School, and the lots had nothing to do with that at all. [75] The purchase of the lots was something subsequent to that. They were granted the right to purchase in the order in which they signed the first guarantee document. They were given preference in that order. I do not know whether this \$10,000.00 that was paid as earnest



(Testimony of Leila L. Cooper.)

money was credited on the lots or later was paid back to those people who advanced it.

Prior to this time we took property with the help of the bank, in the old location, that is, on Fourth Avenue, and carried the mortgages on it. The only property we have ever dealt in was just merely for the purposes of our school there. Right in that one place. Just to expand the school.

The pupils attending our school pay tuition. At this time it was \$100.00 a year.

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The testimony of

**JAY E. RANDALL,**

in narrative form, was as follows:

My name is Jay E. Randall. In 1922 or 1923 I was vice president and trust officer of the Bank of America in Los Angeles. As such officer I had conferences with people interested in the Berkeley Hall School or parents of children attending the school in relation to the establishment of a trust and the purchase of land. I think that was along in 1923. The first conference in relation to the Berkeley Hall School was in relation to a trust being placed in the trust department, a subdivision trust for the Rodeo Land and Water Company. [76] There was property being purchased from the Rodeo Land and Water Company. I was first approached in regard to it by Mr. Monette as I remember it. He was president of the bank. And he

(Testimony of Jay E. Randall.)

said that the Berkeley Hall School was attempting to find a new location and had an opportunity to acquire some land from the Rodeo Land & Water Company in a way which would get them their new location through the cooperation of parents and people who were interested in the school, and wanted to know whether it was a practical proposition to take the trust and handle it in there to protect all parties. I believe Mr. Gilchrist was present at that time representing the people who were interested in putting the project through. There was a loan contemplated, as I remember it now. There was a loan contemplated, making a loan to a group of people who were the ones who were backing the project. I do not remember who they were, but there were a great number of them, as I remember it; a great many were backing the project, people who were interested largely in having such a school as that in Los Angeles. I told Mr. Monett that we could not go ahead without a guarantee from all those people; that we could not take it as an ordinary subdivision trust placed there, because it would be necessary for us to have the guarantee of everyone who was interested in it in order to protect the Rodeo Land and Water Company as well as the lot purchasers. That was always customary. It was a general requirement in trust company moneys. We were furnished the guarantee. I do not remember how many names were on it, but it was—all I can remember is it

(Testimony of Jay E. Randall.)

was quite a lengthy document, quite a [77] lot of names signed on it. I think that at that time the list was turned over to the Credit department for the purpose of checking, because a loan was contemplated.

(A document was passed to the witness.)

As to whether this is the guarantee which was exhibited to me, well, it is so long ago that I could not say for certain, but I think, to the best of my recollection, that is the guarantee, or one similar to it. We consider the signers of the guarantee were financially responsible. That investigation, I think, was made of them by the Credit department of the bank.

The property was conveyed to us by the Rodeo Land and Water Company, as I recall it, and during the time that we were having the title brought down on it, and having the title perfected in us, the entire tract—it seems to me it was entirely sold out. If not *not* entirely sold out, all but one or two lots. They came in with the contracts for the sales. Mr. Gilchrist brought them in before we had the title entirely completed in us.

A loan was contemplated at the time or just prior to the exhibiting of the guarantee to me. The making of the loan of \$100,000.00 to them was contemplated by our bank. I believe the loan was not made. I believe it was not necessary. As I recall it those lots all being sold out, sufficient money came in before it became necessary to make the

(Testimony of Jay E. Randall.)

payment to the Rodeo people. Sufficient money came in so they took care of the initial payment from that, as I recall it. I think our [78] bank agreed to make the loan of \$100,000.00, if it was necessary, as I remember it.

The plan as outlined to me, and as I remember it now contemplated providing several acres of land for them to build a new school. They were crowded where they were and the idea of the people who were behind it apparently, was to acquire a new site for that school and provide some funds to erect a new school so that the school could expand.

We considered it as a religious semi-charitable proposition, and only charged them, as I recall it, one-third of the regular fees, just enough to carry out the regular work.

This guarantee was not brought to us for the purposes of the loan only. We required that there should be in the trust department. The loan was negotiated through Mr. Monett. It was submitted to me as such officer that we accept the trust. I did not think it was right to accept the trust without a guarantee from the people. What the object of the guarantee was for, I do not know, but we could not accept the trust without a guarantee from the parties in interest.

We have a liability to the parties to whom we sell property on contract, to deliver the deed when they make their final payments. How we could hold a man signing a guarantee like the one I looked at there in that kind of a transaction, I do not know,

(Testimony of Jay E. Randall.)

other than that if we wished to hold them responsible for putting up the money before we created the trust of \$135,000.00, or whatever it was that that provided for. We never used that guarantee, never had any occasion [79] to use it. We never made the loan, as far as I recollect. As far as I remember we did not make them that loan.

I believe the lots were all sold out but one or two before we even got the title examined. My recollection is—— I handle a number of subdivision trusts and that stands out very definitely. That was one trust where it was sold out before it even started. The selling was all done by Mr. Gilchrist. I do not know how he was appointed. I know he was not appointed by us. Our negotiations were all with Mr. Gilchrist. I did not know in what capacity the school was being operated, whether it was a partnership, a corporation or what it was. I may have known that they were a corporation, I do not remember. I probably would look that up before making them a loan; but I was not the one making the loan. The object in reducing our fees in the trust department was because we were interested in having such a school in Los Angeles. We were all interested in having that school go ahead.

I knew that the school was devoted to Christian Science. The matter was handled in the Bank of America. I do not remember what the profits were that we made out of the transaction. It was under my jurisdiction, but I did not personally handle the trust. [80]

The testimony of

R. F. STEWART,

in narrative form, was as follows:

My name is R. F. Stewart. I am assistant trust officer of the Bank of America, National Trust and Savings Association. I have charge of the records and files in the various trusts. I have searched the records in relation to Trust Number 109 that was created with the Bank of America on June 1, 1923 in accordance with the subpoena duces tecum that was served upon us. I have found certain trust records but not the escrow records which I was subpoenaed to bring in. We found nothing in relation to the escrow and nothing in relation to the guarantee that was put in the escrow.

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LEILA L. COOPER,

was recalled to the witness stand; her testimony, in narrative form, was as follows:

(Witness is shown petitioner's Exhibit No. 2 for identification.)

The original of this document was signed at the first meeting and was used then by Mr. Gilchrist and perhaps Mr. Swarzwald in going to different people to show what was done. It should be in our file, and the reason I thought it might have been sent to Washington is because it had been on one of these typewritten copies marked Exhibit something. It might have been left with the Rodeo

(Testimony of Leila L. Cooper.)

Land and Water Company, as evidence that those people were back of it. [81] It was not considered valuable in as much as the second one superseded it as a definite company. The first one was made merely as a guarantee that these people would back any collection of money. After the Rodeo Land and Water Company had been talked of, it was thought best inasmuch as the money had changed in amount and the company was definite, to execute a second paper.

As to whether the original of the document was not sent to and kept by the Bureau of Internal Revenue, our secretary at that time did all of that work under the direction of the person who was handling this case, and personally I did not send the paper; but it is marked on one of these copies as an exhibit. I do not know where the original is. We have made every effort to locate the original.

(The document, which has up to this time been referred to as petitioner's Exhibit No. 2 for identification, was at this point admitted in evidence as petitioner's Exhibit No. 2, over respondent's objection.

(Notice filed with the Bureau of Internal Revenue by the Bank of Italy under Section 704(b) of the 1928 Revenue Act offered and received in evidence as respondent's Exhibit C.)

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It is stipulated and agreed by the parties that the Berkeley Hall School in its income tax return

for the year 1925 reported none of the income arising from the trust. [82]

The exhibits are as follows:

Petitioner's Exhibit No. 1.

Petitioner's Exhibit No. 2.

Petitioner's Exhibit No. 3.

Petitioner's Exhibit No. 4.

Joint Exhibit A-1.

Respondent's Exhibit A.

Respondent's Exhibit C.

The foregoing evidence is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

(Signed) ROBERT H. JACKSON,  
Assistant General Counsel for  
the Bureau of Internal Revenue.

[Endorsed]: Lodged Dec. 5, 1935. Filed Jan. 22, 1936. [83]

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[Title of Court and Cause.]

### ORDER.

AND NOW, January 22, 1936, pursuant to notice of lodgment of statement of evidence for the petitioner on review in this case, service of which notice and copy of the statement of evidence having been accepted on January 11, 1936, by Ralph W. Smith, attorney of record for respondent on review, no



objections having been filed to the lodged statement of evidence, and the respondent on review, Berkeley Hall School, Incorporated, not being represented, having been regularly called from the Day Calendar on January 22, 1936, on motion of counsel for the petitioner on review, Commissioner of Internal Revenue, the premises considered, it is hereby

ORDERED, that the statement of evidence for the petitioner on review heretofore lodged be and the same is hereby approved.

[Seal]            (Signed) J. RUSSELL LEECH,  
Member.

Washington, D. C.

January 22, 1936. [84]

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PETITIONER'S EXHIBIT 1.  
(Admitted in Evidence Sep. 26, 1933.)

[Insignia.]

United States of America  
TREASURY DEPARTMENT  
Washington

September 10, 1927.

[Illegible] to Section 882 of the Revised Statutes, I hereby certify that the [illegible] true copy of Agreement of signers for Berkeley Hall School, dated May [illegible] in re: Christian Science School, Beverly Hills, California, the [illegible] of which are on file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[Illegible] of the Secretary:

[Seal]

F. A. BIRGFELD

Chief Clerk,

Treasury Department. [85]

Los Angeles, Cal., May 1, 1923.

The undersigned hereby agree to be one of fifteen or more signers to a guarantee to the Rodeo Land and Water Co., of Beverly Hills, Cal. This guarantee not to exceed One Hundred Thirty Five Thousand Dollars (\$135,000.00) for improvements on tract and to be secured by about seventy two acres of land in Los Angeles County in the Beverly Hills district as outlined this day at a meeting held at Berkeley Hall School. Said guarantee to become null and void after the sum of Three hundred thirty five thousand dollars has been paid to the Rodeo Land and Water Co., on the property.

L. F. Caswell, 2892 Sunset Place

A. L. Markwell, 2115 5th Ave., Limit of

Liability

\$10,000.00

F. F. Hill, 1525 So. Van Ness Ave., L. A.

M. L. Graff, Cal. Club

Arthur E. Dubrow, 4978 Melrose Ave.

Bernard Rosenthal, 2381 W. 23

M. M. Gilchrist, 729 Black Bldg.

C. A. Larson, 256 Arden Blvd., Limit of

Liability

\$5000.00

Harry L. Bailey, 209 So. Dillon St., L. A.	\$2000.00
Mrs. C. R. Baxter, 8090 Mesa Drive	\$10,000
F. E. Mergenthaler, 4327 La Salle	
William Stephens, 334-5 Security Bldg.	\$1,000.
Mrs. Grace D. Geldreich, 1006 S. Alvarado	\$2000
A. E. Wright, 2117 8th Ave.	\$1000
Mrs. Julia S. Caswell, 2892 Sunset Pl.	
A. A. Dittrick, 623 No. Gramercy Place	\$2,000
H. J. Ulch, 4300 La Salle Ave.	\$5000.00
E. D. Williams, Lane Mortgage Bldg	\$1,000.00
Ada H. McClung, 982 Sanborn Ave.	\$1,000
J. C. Sayers, 5906 Willoughby Ave.	
Mrs. Hugh Rennie, 1000 Grand View	\$1000.
Murray Hawkins, 2628 Ellendale Pl.	
J. T. Fitzgerald, Liability limited in said guarantee to	\$5000.00
Geo. W. Possell, 1122 So. Grand View St.	
Joseph W. Rosenthal, Mrs. Mary Young, 1231 Orange Grove, Holly.	
Harry A. Rosenthal, 153 S. Larchmont Blvd.	
Mrs. A. Rosenthal, 153 S. Larchmont Blvd.	
Fred Burkhart, 636 S. Broadway	
Henry I. Beller, 636 S. Broadway	
Paul Paine, 607 Park View Ave.	\$5,000
Neil B. Sinclair, 716 S. Manhattan Place	[86]

## PETITIONER'S EXHIBIT 2.

(Admitted in Evidence Sep. 27, 1933.)

Los Angeles, California,  
April 13th, 1923.

We the undersigned hereby agree to be one of twenty or more signers to a guarantee to a certain Bank or Trust Company in Los Angeles, Cal., to be selected by Berkeley Hall School. This guarantee not to exceed Two Hundred fifty Thousand Dollars (\$250,000) and to be secured by fifty or more acres of land in Los Angeles County in the Beverly District as outlined at a meeting held this day at Berkeley Hall School.

1. A. L. Markwell, 2115 5th Ave., 1 lot.
2. M. M. Gilchrist, 729 Black Bldg., 1 lot.
3. Eugene Swarzwald, 732 Camden Drive, Beverly Hills, 5 lots.
4. Bernard Rosenthal, 2381 West 23rd St., 5 lots.
5. Neil B. Sinclair, 716 So. Manhattan Place, 2 lots.
6. L. F. Caswell, 2892 Sunset Place, 3 lots.
7. J. B. Fullerton, 696 So. Bronson Ave., 2 lots.
8. Horace Boos, 535 Plymouth Blvd.,
9. F. F. Hill, 1525 So. Van Ness Ave.,
10. Paul Paine, 607 Park View Ave., (Liability not to exceed \$10,000) 2 lots.
11. W. W. Wilson, 739 So. Oxford.
12. William Stephens, 2136 5th Ave., 3 lots.
13. Chas A. Larson, 256 Arden Blvd., L. A.
14. J. T. Fitzgerald, 727 So. Hill St. (Liability not to exceed \$5000).

15. Harry A. Rosenthal, 153 So. Larchmont Blvd.,  
2 lots.
  16. Joseph W. Rosenthal, 1231 Orange Grove Ave.,  
Hollywood, 2 lots.
  17. Mrs. Mary Young, 1231 Orange Grove Ave.,  
Hollywood, 2 lots.
  18. Henry I. Beller, 3065 Leeward Ave., 2 lots.
  19. Fred Burkhardt, 3rd Floor Orpheum Bldg., 2  
lots. [87]
- 

PETITIONER'S EXHIBIT 3.

(Admitted in Evidence Sep. 26, 1933.)

THE FRANK MELINE CO.

Incorporated

Realtors - Subdividers - Builders

Loans - Insurance

Main Office

Entire Third Floor Sun Building

S. E. Corner Hill and Seventh Sts.

Phone 606-35

Los Angeles, Calif.

April 30, 1923.

Received of Berkeley Hall School, Inc., \$10,000.00 as earnest money and part payment to apply on the sale of a certain 72 acres owned by the Rodeo Land and Water Company, bounded on the south by Wilshire Boulevard, on the west by Doheney Drive, on the north by the Los Angeles Pacific Railway Right-of-way, and on the east by Pruess Road, upon terms to be agreed upon by both parties. Purchase price to be \$6,000.00 per acre, with payments as follows:

\$75,000.00, or more, cash; \$10,000.00 of which re-

ceipt is hereby acknowledged; \$75,000.00, or more, in 6 months. Balance to be paid in three equal payments, or more, twelve, eighteen and twenty-four months after close of escrow. All deferred payments to bear interest at 6%.

The Rodeo Land & Water Company is to have permission to remove all their buildings from the premises within 90 days.

It is understood between both parties that the measurements of this land are figured from the center of the streets, and to be figured as gross measurements and not net.

In event that satisfactory terms to both parties can not be arranged within 8 days then the \$10,000.00 earnest money paid by the Berkeley Hall School, Inc., shall be returned to them.

FRANK MELINE. [88]

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PETITIONER'S EXHIBIT 4.

(Admitted in Evidence Sep. 27, 1933.)

Exhibit "C"

L. F. Caswell.....	\$2000.
Paul Paine	1000.
A. L. Markwell	1000.
Wm. Stephens	1000.
Mr. Van Allen	1000.
Bernard Rosenthal	1000.
Eugene Swarzwald	500.
C. A. Larsen	500.
Mrs. Hugh McClung	500.
Mrs. Grace Geldreich	500.
E. D. Williams	500.
Mrs. Ida Stevens	500.

The above made first payment of \$10,000. [89]

EXHIBIT A-1.

DECLARATION OF TRUST.

THIS DECLARATION OF TRUST, Made and executed at Los Angeles, California, this 1st day of June, 1923, by the BANK OF AMERICA, a corporation organized and existing under the laws of the State of California, with its principal place of business located in the City of Los Angeles, County of Los Angeles, State of California, hereinafter designated TRUSTEE,

WITNESSETH:

THAT WHEREAS, the RODEO LAND & WATER COMPANY, a corporation organized and existing under the laws of the State of California, hereinafter designated TRUSTOR, has by grant deed transferred and conveyed unto the Trustee all that certain real property described as follows:

Lot Seven (7), Tract Number 3613, in the city of Beverly Hills, State of California, as per map recorded in Book 38, Pages 65 and 66, Official Records of Los Angeles County; and

WHEREAS, the Trustor has agreed to sell and convey unto the BERKELEY HALL SCHOOL, a corporation organized and existing under the laws of the State of California, hereinafter designated BENEFICIARY, the aforesaid property on the basis of the purchase price of Six Thousand (\$6000.00) Dollars per acre, there being Seventy-seven and three hundredths (77.03) acres more or

less in said tract to be computed by proper survey and including the property to the center line of adjoining roads, there being a total estimated purchase price thereon of the sum of Four Hundred Sixty-two Thousand One Hundred Eighty (\$462,180.00) Dollars; and

WHEREAS, the said Beneficiary on account of said purchase price has paid to the said Trustor the sum of One Hundred Thousand (\$100,000.00) Dollars, collected on proposed sales of property hereunder receipt whereof is hereby acknowledged by the said Trustor from the said Beneficiary; and

WHEREAS, the more readily to dispose of said properties, same has been platted and is to be sold in lots at a release price to be agreed upon and [90]

WHEREAS, it is the intention of this trust that the said properties be so sold and the said purchase price be paid from the collection of sales prices thereof, when and as the same is collected, the money to be applied in the manner as hereinafter set out; and

WHEREAS, the said Trustee has paid no consideration for the conveyance to it of the properties hereunder, other than the agreements herein contained;

NOW, THEREFORE, the said Trustee does hereby certify and declare that it holds and will hold the said property in trust under the terms and conditions, and for the uses and purposes set forth in this Declaration of Trust.



## ARTICLE ONE.

### Scope of Trust.

1. To secure the payment of the purchase price due the Trustor from the Beneficiary and the balance hereunder thereon in the sum of Three Hundred Sixty-two Thousand One Hundred Eighty (\$362,180.00) Dollars, more or less, according to the acreage hereunder as follows:

On or before January 1, 1924, \$100,000.00;

On or before July 1st, 1924, 87,393.34;

On or before January 1, 1925, 87,393.33;

On or before July 1st, 1925, 87,393.33;

more or less according to the acreage above provided.

2. To secure to the Trustee its fees, commissions, expenses and advances under the terms of this Declaration of Trust, for the purpose of selling, disposing and converting into cash, to the account of said Trustor and said Beneficiary hereunder, the trust properties covered hereby, and to distribute the proceeds thereof, as herein provided.

## ARTICLE TWO.

### Duties of Trustee.

The Trustee hereby agrees that it will, for the purpose of carrying out the terms and conditions of this trust, do and perform all necessary things for that purpose as follows: [91]

1. Subscribe to a subdivision map of the aforesaid property, when and as requested by the Beneficiary after the same has been approved by the

Trustor, and shall sell the said property and convey the same to purchasers at such prices and upon such terms of sale as it may be directed to do by the said Beneficiary, except that until all of the indebtedness due the Trustor hereunder has been fully paid, together with any advances made by said Trustor for the benefit or protection of the Trust Estate, no conveyances or contracts of sale shall be made, or any of said property sold at a price less than that set forth as a minimum sales price contained in the schedule marked Exhibit "A", hereto attached, hereby referred to, and made a part hereof, for each lot covered by said conveyance or contract of sale, and upon terms of payment satisfactory to the Trustee, but any conveyance made by the Trustee shall vest in its grantee a good and unassailable title free and discharged of its trust without any obligation on the part of the purchaser to see to the application of the money, provided that all conveyances and contracts of sale shall have, and contain therein, conditions, restrictions, reservations and limitations as to use of said property, as contained in Schedule "B", attached hereto, hereby referred to, and made a part hereof.

2. All moneys from the sale of lots shall be paid to and received by the Trustee, and applied by the Trustee as follows:

(a) Until the purchase price due to the Trustor hereunder shall have been paid, there shall be set aside and paid over to the said Trustor by the Trustee from all funds received by it from the sales

of property, not less than sixty (60) percent of the gross receipts thereof, payable in lots of \$1000.00 or more, same to be applied by the Trustor upon the said balance of purchase price due on said property from the said Beneficiary;

(b) Forty (40) percent of said gross receipts shall be set aside for the purpose of defraying of expenses of this trust and [92] of the subdivision of said property, including the commissions and expenses of sale thereof, and which funds shall be subject to the order of the Beneficiary for this purpose, provided that such of said funds as are not thus necessary for said purposes shall be allowed to accumulate and be applyable at any time at the option of the Beneficiary to the balance of purchase price payable to the Trustor hereunder.

3. To accept and act upon the instructions of M. M. Gilchrist relative to the supervision and (improvement

vestment) of the said property under subdivision map as hereto attached, hereby referred to and made a part hereof, he being hereby retained by the Trustor and Beneficiary to supervise, manage and handle the placing of the subdivision improvements of said property and to manage and operate the sales relative thereto. That as a consideration of the said management of the operations and handling of said subdivision, and the sales thereof, the said M. M. Gilchrist shall receive from the Trustee, payable as and when the moneys are received under sales, a commission of five per cent (5%) on the gross sale price, of which three and

a half ( $3\frac{1}{2}$ ) per cent shall be paid from the first moneys paid by the purchaser on the sale of such property as may be sold hereunder during the term of this trust, and  $\frac{3}{4}$  of 1% from the twelve (12) months' payment and  $\frac{3}{4}$  of 1% from the eighteen (18) months' payment, which said commission shall be payable from the aforesaid forty (40) per cent.

4. To execute all contracts of sale and deeds for individual parts or portions of the whole of said demised property, in such form and on such terms as may be approved by the said Beneficiary; containing therein the aforesaid restrictions and reservations, provided, however, that the form and conditions of said sales contracts and deeds shall be satisfactory to the Trustee and the said Trustor.

5. To enforce the terms, conditions and penalties including the cancellation for default by action or suit, of the various and several contracts to be executed by it, as authorized hereunder, the costs and expenses of which are to be borne by the said Beneficiary and payable from the said 40% of the gross receipts. [93]

6. During the term of this trust said Trustee shall not be required to procure or maintain any insurance upon any buildings on said property, or to pay or secure the payment of any liens, encumbrances, taxes, assessments, or other charges against said property, or to collect or disburse any rentals therefrom or protect or perfect any title it may have thereto, or in any other respect to care for, maintain and protect the trust estate or this Trust against

any legal and/or equitable attack, unless and until requested so to do in writing by said Trustor, and/or said Beneficiary, accompanied by a sum of money, and/or at the option of the Trustee, indemnity of such character and amount, as shall in the judgment of said Trustee, be adequate and sufficient to pay or protect it against all costs, charges, expenses and liabilities expended or incurred in connection therewith, unless and until so requested in writing and so furnished with such money or indemnity, all responsibilities towards said property and this trust shall rest solely and exclusively upon said Trustor, and/or Beneficiary, and not upon said Trustee.

7. Said Trustee shall not be answerable or responsible for the validity of the conveyance to it of any property, or for the value thereof, or title thereto, nor for any easements, encumbrances, restrictions or other limitations thereon or claims thereto, but the sole, only and exclusive liability of said Trustee shall be to convey the aforesaid property upon the written request of the said Trustor, and/or said Beneficiary, and then only to convey such title thereto as shall actually have been conveyed to it and by it accepted in trust herein, and/or which the said Trustor, and/or said Beneficiary, may be able to maintain or perfect in said Trustee for the purposes of this Trust and not otherwise. No sale or transfer of any interest herein shall be valid or binding upon said Trustee unless and until the duplicate copy of the assignment thereof shall

have been first delivered to and accepted by the said Trustee for the purposes of transfer except where such interest may pass or be transferred by decree and/or order of court, and then only upon satisfactory proof of the regularity and validity of the [94] proceedings in such matter being presented to said Trustee, and no contracts of purchase or sale shall be executed or assigned in any way which will involve the Trustee in the recognition thereof.

If the whole or any of the property herein described or the proceeds or avails thereof, shall, at any time, during the term hereof, or upon the expiration of this Trust, become liable for payment of any estate, inheritance, income, or other tax, charge or assessments, which said Trustee shall be required to pay, then unless such taxes shall have been fully paid when due, by some one else, said Trustee is hereby authorized, at its option, without previous notice to or demand upon any person, to pay such taxes out of the whole or any portion of the property then subject to this trust, and for that purpose is hereby generally and specifically authorized and empowered, without previous notice, or demand, to or from any person whomsoever, to sell at public or private sale, and convey sufficient portion of the Trust Estate, up to and including the whole thereof, as shall fully pay all such taxes, all costs and expenses of such sale, all the sums together with interest thereon at seven percent per annum, payable quarterly, when due the Trustee,

under this Trust, or which it may have advanced or expended in the care, management and protection of the Trust Estate, and in the payment of any said estate, inheritance, income, or other taxes levied upon the Trust Estate, or on behalf of any one interested therein, and which said Trustee may be required to pay, shall constitute a first lien on all the property subject to this Trust, and in favor of said Trustee.

8. Upon the payment in full of any contract, the Trustee shall execute deed required, and furnish a Guarantee of Title to the Grantee, showing the property covered thereby vested in the seller, free and clear of all encumbrances and assessments assessed prior to date of said contract; subject, however, to all conditions, restrictions and reservations as provided aforesaid.

9. To permit and authorize the Beneficiary upon the giving of a ..... Bond therefor satisfactory to the Trustee and subject to the conditions and restrictions herein provided for, to enter [95] upon and improve, according to the map filed hereunder, as said Beneficiary may see fit in respect thereto, the trust property, or any part thereof, or the adjoining streets or highways, and the sidewalks created by said subdivision thereof; it being expressly stipulated and agreed that the said Beneficiary shall at all times hereunder pay all taxes as and when they become due, and keep the property free from all liens or assessments by reason of such improvements. The Trustee shall within ten days

after the inception of the work of improvement on the demised premises, under said subdivision or otherwise, when the same has come to its notice, post notice of non-responsibility upon said property and record the same, as required under Section 1192 of the Code of Civil Procedure, provided that the Beneficiary shall at all times keep the Trustee advised of any and all improvements upon said premises.

### ARTICLE THREE.

#### Conditions.

1. The Trustee shall not be required to advance any money or to incur any personal liability in or about the protection of the trust property, or in respect to any of the contracts to be made by it hereunder (except for the liability to account for money coming into its hands) as herein contemplated, and any advancements herein provided to be made by the Trustee and any personal obligations which it may hereunder incur for advancements out of its personal or private funds shall be at all times taken as being optional and in no respect obligatory.

2. The Trustee hereunder shall be entitled in the event of any action being brought by the Trustee herein, for the enforcement of contracts executed provisional to this trust, select and nominate any reputable attorney to represent the Trustee, provided that whenever any action is brought pursuant to this Trust in the name of the Trustee, the Trustee



before bringing such action or authorizing its name to be used therein, shall be entitled to require of the parties hereto, reasonable and satisfactory security to protect it against costs or liabilities incurred in and about such action. [96]

3. The Trustee shall not be liable to the parties hereto, or otherwise, for the misconduct, malfeasance or misappropriation of any attorney, agent or representative selected by it upon the nomination or request of the said parties of this trust, except where such agent or attorney may act upon the express authorization of the Trustee, outside of the terms of the contract authorized hereby.

The Beneficiary agrees to install water mains, gas mains, telephone and electric poles to any and all parts of the demised premises, it being understood and agreed that the work of installation thereof will be begun within a reasonable time after execution of this Declaration of Trust. All street work, such as grading, oiling, curbing and sidewalks, to be begun within sixty (60) days from actual possession of said premises and be prosecuted with due diligence until completed—all work to comply with requirements of the City of Beverly Hills. It is understood and agreed that the Beneficiary hereunder is primarily responsible for all improvements on said property, and expenses of this trust, including the payment of commissions to the said M. M. Gilchrist and the agents for sales on property, and that the same shall be deductible from

the forty (40) per cent payable to the order of the Beneficiary hereunder for the purpose of carrying out the provisions of this Trust, provided that the said Trustor shall at no time be held liable for any expenses relative to the matters herein contained, except and until it shall have gained control of the Trust under the foreclosure of the interest of the Beneficiary hereunder, as hereinafter set out.

It is further understood and agreed that the balances of purchase price due from the Beneficiary to the Trustor hereunder shall bear interest at the rate of seven (7) per cent per annum, payable semi-annually, from and after the 1st day of July, 1923, until fully paid and chargeable against the forty (40) per cent set aside for operating expenses hereunder, provided, further, that in the event that upon any interest payment date insufficient funds are available in said [97] reservation account for the purpose of paying either the installment of principal then due, and/or the interest due on the balance, then and in that event the Beneficiary shall pay the same into the Trust for that purpose. After the indebtedness due to the Trustor from the Beneficiary, together with the interest thereon, as hereinabove provided, and any advancements made in accordance with the provisions hereof, and the costs and expenses of this trust, as herein provided, have been paid, then the Trustee shall hold all of the money then or thereafter coming into its hands, and the property then remaining in its hands for

the sole benefit of and subject to the order of the Beneficiary, and any property remaining in its hands shall then be sold at such price and upon such terms as it may direct. In the event that the Beneficiary herein shall sell, assign and transfer its interest in this Trust, or any part thereof, then, in the management of said property and the sale of said lots, the Trustee, as regards the interest of the Beneficiary and those who have succeeded to any or all of its interests hereunder, is hereby authorized and empowered to act upon the order of those, collectively, holding a majority of the beneficial interest hereunder by virtue of such assignments, in respect to the rights of the Beneficiary hereunder, and any such assignments of any beneficial interests hereunder shall be made subject to the provision that respective assignees, as a condition precedent to the validity of said assignment, respectively assume and agree to perform all the things agreed to be done and performed by the Beneficiary hereunder, in accordance with their proportionate share of such beneficial interest as they may have received, by virtue of the respective assignments. And the Beneficiary hereof does hereby bind itself to pay, as and when due, all sums of money necessary for the subdivision and improvement of said property, for taxes and for all and any other obligations provided for herein to be paid by the Beneficiary, and also any advancements made either for the benefit of the Beneficiary, or for the benefit of the property, including the fees, expenses and charges of

the Trustee for acting hereunder, immediately and upon demand made by the Trustee, together with interest, if any, accrued [98] thereon, unless the equivalent thereof available to the Trustee for said purpose shall be standing to the credit of the Beneficiary with the Trustee, realized from the sale of said property, or otherwise, and in the event of the default of the payment of the obligations, or any of them provided hereunder to be paid by the Beneficiary, the Trustee shall upon the written request of the Trustor, or at its option to cover its fees and expenses and advancements hereunder, sell the interest of the said Beneficiary under this Trust, which sale shall be made in the following manner, namely:

The Trustee shall, upon the serving upon it of the written declaration of default by the Trustor, or upon its own initiative, to cover expenses and costs hereunder, or other obligations past due and payable by the Beneficiary hereunder, publish notice of the time and place of such sale, with a general description of the interests so to be sold, at least once a week for four successive weeks, in some newspaper of general circulation published in the City of Los Angeles, California, and may from time to time postpone such sale by publication of such postponement in the same newspaper in one issue only prior to the date of sale, or at its option by public announcement of such postponement at the time and place of such sale so advertised, as aforesaid, and on the date of such sale so advertised, or

on the date to which such sale may be postponed, the Trustee shall sell the interest so advertised at public auction, in the City of Los Angeles, to the highest bidder for cash, provided that not more than ten days prior to the date of said sale published as the date of sale of said property, and not less than five days previous to said date so fixed, said Trustee shall post in not less than three public places in Los Angeles County a similar notice to that published, thus setting out the date of sale, and any beneficiary hereunder, or other person, may bid and purchase at such sale, and upon such sale the Trustee, after due payment made to it hereunder of the sale price therefor, may make and deliver to the purchaser at such sale an assignment and transfer of the interest so sold, and thereafter such purchaser shall have the same right and privileges hereunder of the original [99] Beneficiary, or its assigns, so defaulting, as aforesaid, subject however to all the terms and conditions of this trust, and the said Beneficiary for itself and its successors and assigns, does hereby convey, assign and transfer to the Trustee any and all right, title and interest whatsoever in and to its beneficial interest hereunder, to enable the Trustee to convey, assign and transfer such interest upon such sale thereof by the Trustee, in the event of default, as above provided, and any subsequent assignment of beneficial interest made by the Beneficiary shall be subject to the assignment by it for the purpose of accomplishing the object of this provision in this

Declaration of Trust, as hereinabove set out, and shall be so accepted by such subsequent assigns.

Distribution from the proceeds arising from such sale by the Trustee shall be made and applied by the Trustee as follows:

1st. To the payment of expenses of such sale, including the Trustee's fee of \$1000.00, which amount shall be in addition to the fees elsewhere provided, all to become and be due and payable upon action by the Trustee on its own behalf in such sale, or upon demand being made upon the Trustee for the sale by it of the interest of such defaulting Beneficiary or its assigns, as hereinabove provided.

2nd. To the Trustor, person or persons, to whom the same may be due, being the obligation upon which the default has been declared and forming the basis of such sale, and the remainder to any other obligation payable by the Beneficiary, or its assigns hereunder, and secured hereby, and the balance if any to the defaulting party. In the event of the sale, as aforesaid, of any such interest of any such defaulting Beneficiary, or its assigns, in this trust, and the execution by the Trustee of the assignment and transfer thereof under this trust, then the recitals therein as to the default and publication of notice of sale, and the demand that such sale be made, postponement of sale, amount and terms of sale, purchaser, payment of purchase money, or any other fact or facts affecting the regularity and validity of such sale, shall be conclusive proof of all facts recited in such assignment, and

any such assignment and transfer with such [100] recitals therein shall be effectual and conclusive against such defaulting Beneficiary and/or its assigns, and all other persons as to all facts recited therein; and the receipt for the purchase money contained in any assignment and transfer executed by the Trustee to the purchaser at any such sale as aforesaid shall be sufficient discharge to such purchaser from all obligations to see to the proper application of the purchase money. It is understood, however, that there shall be no personal liability on the part of any such beneficiary or its assigns for any deficiency which might result from the insufficiency of the sale price, except that nothing herein shall in any way relieve any of the parties hereto from liability to the Trustee for its fees, costs and expenses and release from liability hereunder. Provided, however, that the Trustee hereby agrees to act under the terms of this instrument upon the following conditions:

That, except upon its willful default or gross negligence, it shall not be liable to anyone, and when in its discretion it acts upon the advice of legal counsel selected and employed by it in good faith in accordance with the opinion of such counsel, it shall not be liable for any result of such action, and the Trustee does not and shall not assume any obligation to pay for, or on account of any of the parties hereto or said Trust property or to or for the account of any one whomsoever any money except as herein specifically provided, except at its option to do so.

### Termination of Trust.

The Trustee hereunder may upon sixty (60) days written notice to the Trustor and/or its successors or assigns, and to the Beneficiary and/or its successors or assigns, mailed to the last known address held by the Trustee, resign its Trusteeship, and such notice properly mailed, postage paid, at Los Angeles, California, shall become effective for all purposes from the date of said mailing, as the date of notice, and in the event of the failure or refusal of the Trustor and the Beneficiary, as aforesaid, to designate a successor hereunder within said period, the Trustee may apply to the Superior Court of Los Angeles County [101] which is hereby given jurisdiction and authorized to designate, appoint and employ a Trustee or Receiver as its successor hereunder. All moneys under this Trust shall be payable by check of the Trustee, and all deeds, contracts and similar instruments pertaining to the property held hereunder shall be executed by said Trustee, but said Trustee shall not be required, as aforesaid, to make any such conveyance unless and until there shall have been obtained by it, and furnished at the expense of this Trust prior to the execution thereof, a Guarantee or Certificate of Title furnished by a reliable Title Company, showing the property desired to be conveyed vested free and clear of all encumbrances in said Trustee, except the restrictions, reservations and conditions, as hereinbefore especially provided for.



Compensation of Trustee.

The Trustee shall be entitled to, and receive, the following compensation for its services in or about the performance of this trust:

1. Acceptance fee \$250.00;
2. One (1) per cent on all cash sales, and on sales under Contracts of sale where the deferred payments are not more than four in number and not extended over a period of more than twenty-four (24) months from the date of execution thereof. Three (3) per cent on all sales under contract where a greater number of deferred payments are provided for over a period of time not more than twenty-four (24) months, or the period provided for making said payments, or in which the same is not paid, is more than twenty-four (24) months;
3. \$1.50 for each contract of sale executed by the Trustee, and \$2.50 for each deed or other instrument executed by the Trustee; or acceptance of an assignment;
4. Closing fee of \$250.00.

Reasonable compensation for any and all extraordinary services for which the costs, fees and expenses are not hereunder especially provided for.

The aforesaid fees shall be collected by the Trustee [102] from the corpus of this Trust and/or any moneys in its possession, and/or any parties hereto, unless prior to the incurring thereof the same shall have been paid and the same shall be due as and when the said services are performed by the Trustee

herein, and this Trust shall not cease or terminate in any event until all the costs, fees, expenses, liabilities, advances if any with interest thereon, of the Trustee as incurred herein, or by reason hereof, shall have been fully paid.

It is understood and agreed that the Trustor shall have to and including August 9, 1923 within which to remove from the premises any and all buildings, improvements, equipment and personal property including fences; they being specifically reserved to the said Trustor hereunder.

The conditions and provisions of this Trust shall inure to and bind the said Trustee and the Trustor and the Beneficiary, their successors and assigns.

IN WITNESS WHEREOF, the BANK OF AMERICA in its capacity as Trustee, has caused this instrument to be duly executed by its officers thereunto duly authorized, and its corporate seal to be affixed the day and year first above written.

BANK OF AMERICA,

By ORA E. MONNETTE

President.

By VICTOR P. SHOWERS

Asst. Secretary.

Approved:

JAY E. RANDALL

Trust Officer. [103]

The undersigned, named in the above Declaration of Trust, as Trustor and Beneficiary, do hereby respectively approve, ratify and confirm the same

in all its particulars, and do hereby declare that the same sets forth the full terms and conditions under which the same properties are held in trust, and do hereby respectively agree to be bound by all of the terms hereof, and to do and perform all the respective obligations contained therein, to be paid, done or performed by us respectively.

RODEO LAND & WATER COMPANY,

By [Signature Illegible]

President.

By F. B. SUTTON

Secretary.

BERKELEY HALL SCHOOL,

By LEILA L. COOPER

President.

By MABEL R. COOPER

Secretary. [104]

## PRICE LIST.

Lot	Price	Lot	Price	Lot	Price
1	\$4000.00	45	\$1300.00	106	\$1350.00
2	2000.00	46	2400.00	107	1350.00
3	1750.00	47	3000.00	108	1350.00
4	2500.00	48	1000.00	109	1350.00
5	16300.00	49	1000.00	110	2550.00
10	2300.00	50	1000.00	128	2500.00
11	1750.00	51	1000.00	129	1750.00
12	1750.00	52	1000.00	130	1750.00
13	1750.00	53	1000.00	131	1750.00
14	1750.00	54	1000.00	132	2500.00
15	1750.00	55	1000.00	133	1100.00
16	1750.00	56	1500.00	134	1200.00
17	1750.00	62	2500.00	135	1200.00
18	1750.00	63	1750.00	136	1200.00
19	4000.00	64	1750.00	137	3000.00
20	2800.00	65	1850.00	138	2000.00
21	2000.00	66	2500.00	139	1200.00
22	2000.00	67	44200.00	140	1200.00
23	2000.00	84	2500.00	141	1200.00
24	2000.00	85	1300.00	142	1200.00
25	2100.00	86	1300.00	143	1200.00
26	2200.00	87	1300.00	144	1200.00
27	2250.00	88	1300.00	145	1200.00
28	2250.00	89	1300.00	146	1200.00
29	2250.00	90	1300.00	147	2600.00
30	3000.00	91	1300.00	148	2600.00
31 )		92	1300.00	149	1400.00
32 )	12500.00	93	1300.00	150	1400.00
33	4650.00	94	1200.00	151	1400.00
34 )		95 )		152	1400.00
35 )	11500.00	96 )	11000.00	153	1400.00
36	1200.00	97	4700.00	154	1400.00
37	1300.00	98 )		155	1400.00
38	1300.00	99 )	11000.00	156	1400.00
39	1300.00	100	1250.00	157	1400.00
40	1300.00	101	1400.00	158	1350.00
41	1300.00	102	1350.00	159)	
42	1300.00	103	1350.00	160)	11000.00
43	1300.00	104	1350.00		
44	1300.00	105	1350.00		

## PRICE LIST.

Lot	Price	Lot	Price	Lot	Price
161	\$4700.00	201	\$1300.00	241	\$1400.00
162)		202	1300.00	242	1400.00
163)	11000.00	203	1300.00	243	1400.00
164	1350.00	204	1300.00	244	1400.00
165	1400.00	205	1300.00	245	1400.00
166	1400.00	206	1300.00	246	2200.00
167	1400.00	207	1300.00	247	3000.00
168	1400.00	208	1300.00	248	1250.00
169	1550.00	209	2300.00	249	1250.00
170	1550.00	210	2700.00	250	1250.00
171	1400.00	211	1400.00	251	1250.00
172	1400.00	212	1400.00	252	2500.00
173	1400.00	213	1400.00	253	1750.00
174	2650.00	214	1400.00	254	1750.00
175	2700.00	215	1400.00	255	1750.00
176	1300.00	216	1400.00	256	2500.00
177	1300.00	217	1400.00	257	1250.00
178	1300.00	218	1400.00	258	1350.00
179	1300.00	219	1400.00	259	1350.00
180	1300.00	220	1350.00	260	1350.00
181	1300.00	221)		261	3000.00
182	1300.00	222)	11000.00	262	2200.00
183	1400.00	223	4750.00	263	1450.00
184	2000.00	224)		264	1450.00
185	2950.00	225)	11500.00	265	1450.00
186	1250.00	226	1400.00	266	1450.00
187	1250.00	227	1500.00	267	1450.00
188	1250.00	228	1500.00	268	1450.00
189	1250.00	229	1500.00	269	1450.00
190	2500.00	230	1500.00	270	1450.00
191	1750.00	231	1500.00	271	2300.00
192	1750.00	232	1500.00	272	2750.00
193	1750.00	233	1500.00	273	1550.00
194	2500.00	234	1500.00	274	1550.00
195	1050.00	235	1600.00	275	1550.00
196	1250.00	236	2750.00	276	1550.00
197	1150.00	237	2300.00	277	1550.00
198	1250.00	238	1400.00	278	1550.00
199	2950.00	239	1400.00		
200	2000.00	240	1400.00		

## PRICE LIST.

Lot	Price	Lot	Price		
279	\$1550.00	312	\$1400.00	345)	
280	1550.00	313	1300.00	346)	\$12500.00
281	1550.00	314	2000.00	347	4750.00
282	1400.00	315	1750.00	348)	
283)		316	1750.00	349)	15000.00
284)	11500.00	317	3500.00	350	3800.00
285	4750.00	318	2600.00	351	2500.00
286)		319	1500.00	352	2700.00
287)	11500.00	320	1400.00	353	2650.00
288	1550.00	321	1550.00	354	2600.00
289	1650.00	322	1400.00	355	2600.00
290	1650.00	323	3450.00	356	2600.00
291	1650.00	324	2300.00	357	2600.00
292	1650.00	325	1500.00	358	2600.00
293	1650.00	326	1650.00	359	2800.00
294	1650.00	327	1650.00	360	4000.00
295	1650.00	328	1650.00	361	3300.00
296	1650.00	329	1650.00	362	2750.00
297	1650.00	330	1650.00	363	2600.00
298	2750.00	331	1650.00	364	2600.00
299	2500.00	332	1650.00	365	2600.00
300	1650.00	333	2500.00	366	2600.00
301	1650.00	334	2750.00	367	2600.00
302	1650.00	335	1650.00	368	2600.00
303	1650.00	336	1650.00	369	2750.00
304	1650.00	337	1650.00	370	3150.00
305	1650.00	338	1650.00	371	4000.00
306	1650.00	339	1650.00	372	2300.00
307	1650.00	340	1650.00	373	2300.00
308	2300.00	341	1650.00	374	2600.00
309	3450.00	342	1650.00	375	2600.00
310	1400.00	343	1650.00		
311	1400.00	344	1650.00		



lows, to-wit: \$..... cash upon execution of this Agreement to the Seller, in hand paid, receipt whereof is hereby acknowledged, and the balance thereof payable \$..... on or before the 1st day of December, 1923; \$..... on or before the 1st day of June, 1924; and \$..... on or before the 1st day of December, 1924, together with 7% interest, payable semi-annually.

The Buyer agrees to pay all taxes and assessments which may hereafter become due against the said property at least ten days before the same become delinquent and, upon failure so to do, the Seller shall have the right to pay the same, together with any and all costs and legal percentages which may be added thereto; and the amount so paid, with interest thereon at the rate of seven per centum per annum from the date of payment until repaid, shall be secured hereby and shall be repaid by said Buyer to the Seller on demand.

IT IS FURTHER AGREED that time is of the essence of this contract, and if the Buyer shall fail or make default in any of the payments herein promised and agreed to be paid, as the same mature or become due, or of any installment of interest, and shall continue in default for a period of sixty days beyond the due date, as herein provided, or shall fail to pay said taxes or assessments as in this contract provided, or shall fail in any respect to carry out the terms of this contract, then this agreement may be terminated and cancelled at the option of the Seller, without further notice from the Seller,



and the Seller shall thereupon be released from all obligation, in law or in equity, to convey said property, and the said Buyer hereby agrees that he or she will and shall forfeit all right thereto, and all moneys paid to Seller shall be forfeited to and retained by the Seller as rent and agreed as liquidated damages for said default, the Buyer hereby expressly waiving written notice of said default.

All payments due or to become due under this contract of purchase must be made at the Bank of America, 752 South Broadway, Los Angeles.

It is agreed that the Seller is not responsible or liable for any inducement, promise, representation, agreement, condition or stipulation not set forth herein.

As soon as the Buyer shall have made all payments hereunder, including principal, taxes, assessments and interest, as aforesaid, if made within the time and manner aforesaid as a condition precedent, said Seller shall, and it does hereby agree to convey said premises by a deed of grant to the said Buyer, and to furnish a certificate of title, showing its title to said lands to be free of encumbrances made or suffered by the Seller at the date of said conveyance, subject to municipal ordinances, if any, affecting the use and occupancy of the premises, and restrictions, reservations and limitations of record, and the provisions as follows, to-wit:

## RESTRICTIONS, RESERVATIONS AND CONDITIONS

This contract of purchase is made upon the condition that said property shall not be used, nor shall any part thereof be used, for the purpose of drilling thereon for, or producing therefrom, oil, gas or any other mineral substance.

The purchaser of any lot or lots shall not, nor shall any of their assigns or successors in interest, nor those holding or claiming to hold thereunder, use or cause to be used, or allow or authorize in any manner, directly or indirectly, the premises, or any part thereof, to be used for the purpose of vending intoxicating liquors for drinking or any other purposes.

The premises shall not be rented, leased or conveyed to, held by, or occupied by any person other than of the white or Caucasian race.

All lots fronting on Wilshire Boulevard and to a depth of 150 feet therefrom may be used for either residence or business purposes, and shall cost not less than \$5,000.00, and any outbuildings, private stables or private garages shall not be erected within 75 feet of Wilshire Boulevard.

All buildings to be erected on Doheny Drive, except Lot 350, shall be used exclusively as private residence, with a limit of one house to each lot, except Lots 360, 317 and 371, which may be occupied with one or more houses, and no residence to be erected on said lots shall cost less than \$5,000.00.

The foundations of all said buildings shall show a set-back from the front property line of 20 feet, and all driveways leading to the rear of said premises, excepting Lot 350, shall be placed on the south side of said lots. On Lots 360, 361, 370 and 371, all buildings erected thereon must have a set-back from the side property line of at least five feet. Any out-buildings, private stable or garage erected in conjunction therewith shall be located not less than 75 feet from Doheny Drive. Lot 350 is governed by same conditions as apply to property fronting on Wilshire Boulevard.

All buildings to be erected on Wetherly Drive shall be used exclusively as private residences, with a limit of one residence to each lot, and must represent a cost of not less than \$4,000.00. The foundations of all said buildings must show a set-back from the front property line of 20 feet, and all driveways leading to the rear of said dwellings, except Lots 288, 289, 299, 308, 309, 313, 344, 334, 333, 324, 323 and 319, inclusive, shall be placed on the south side of said lots. On Lots 288, 298, 299, 308, 309, 334, 344, 333, 324, 323, 319 and 313, all buildings erected thereon must have a set-back from the side property line of at least five feet, except Lots 313, 319, 288 and 347.

All buildings to be erected on Almont Drive and La Pere Drive shall have a set-back of 15 feet from the foundation to the front property line, and all driveways leading to the rear of said premises must be placed on the south side of the property, except Lots 164, 174, 175, 184, 185, 189, 195, 199, 200, 209,

210, 220, 226, 236, 237, 246, 247, 251, 257, 261, 262, 271, 272 and 282. On lots 164, 174, 175, 184, 185, 189, 195, 199, 200, 209, 210, 220, 226, 236, 237, 246, 247, 251, 257, 261, 262, 271, 272 and 282, inclusive, all buildings erected thereon must have a set-back of not less than 5 feet from the side line of said property, except Lots 164, 189, 195, 220, 226, 251, 257, and 282.

No buildings, however, can be erected on said lots at cost less than \$3,500.00, and this restriction applies where one or more buildings are erected on any one lot and intended for occupancy.

On lots facing on Almont and La Pere Drives, there are no restrictions against the building of double bungalows, duplexes, apartments, flats or bungalow courts, but restriction does apply against the erection of any building for use or occupancy as a mercantile business.

All buildings erected on Swall Drive shall have a set-back of 15 feet from the foundation to the front property line, and all driveways leading to the rear of said premises must be placed on the south line of the property, except Lots 67, 100, 110, 133, 137, 138, 147, 148, 158, inclusive. On Lots 67, 100, 110, 133, 137, 138, 147, 148, 158, inclusive, all buildings erected thereon must have a set-back of not less than 5 feet from the side line of said property, except Lots 100, 133 and 158. No building, however, can be erected on said property at a cost less than \$3,500.00, and this restriction applies where one or more buildings are erected on one lot and intended

for occupancy. There are no restrictions against the building of double bungalows, duplexes, apartments, flats or bungalow courts on property abutting Swall Drive, but restriction does apply against the erection of any building for use or occupancy as a mercantile business. Lot 67, facing Swall Drive, is restricted only to its general use for buildings and grounds for educational or religious purposes, private residences, double bungalows, duplexes, flats, apartments or bungalow courts. [108]

All buildings erected on Clark Drive shall have a set-back of 15 feet from the foundation to the front property line, and all driveways leading to the rear of said premises must be placed on the south line of the property, except Lots 84, 46, 47, 56, 36 and 94, inclusive. On Lots 84, 46, 47, 56, 36 and 94, inclusive, all buildings erected thereon must have a set-back of five feet from the side line of said property, except Lots 36 and 94. No building, however, can be erected on said property at a cost less than \$3,500.00, and this restriction applies where one or more buildings are erected on one lot and intended for occupancy. There are no restrictions against the building of double bungalows, duplexes, apartments, flats or bungalow courts on property abutting Clark Drive, but restriction does apply against the erection of any building for use or occupancy as a mercantile business. Lots 67 and 5, facing Clark Drive, are restricted only to their general use for buildings and grounds for educational or religious purposes, private residences, double bungalows,

lows, duplexes, flats, apartments or bungalow courts.

All lots having a frontage on Pruess Road, except Lot 5, and to a depth of 100 feet, may be used for either residence or business purposes, but any building erected thereon (except outbuildings, private stables or private garages) shall cost and be fairly worth \$3,500.00. Lot 5 may be used as playgrounds as well as for residence or business purposes.

All lots having a frontage on Burton Way may be used for either residence or business purposes, but any building erected thereon (except outbuildings, private stable or private garages) shall cost and be fairly worth \$3,500.00.

No building shall be permitted having a frontage on either Dayton Way or Clifton Way.

The breach of any of the conditions and covenants contained herein shall cause said premises, together with the appurtenances thereto **belonging**, to be forfeited and revert to the grantors, their heirs, successors or assigns, each of whom shall have the right to immediate entry upon said premises in the event of such breach; provided, however, that before any forfeiture may be declared or enforced, the grantors, their heirs, successors or assigns, shall post in a conspicuous place on the premises a written notice, declaring his intention so to do, and if within thirty days thereafter the grantee shall cure the breach then no forfeiture shall be declared or enforced therefor. But the breach of

any of the said conditions or covenants, or any re-entry by reason of such breach, shall not defeat or affect the lien of any mortgage or deed of trust made in good faith, for value, upon said land; provided, however, that the breach of any of said conditions may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of the trust deed or mortgage; but nevertheless, each and all of the said conditions and covenants shall remain at all times in full force and effect as against and shall be binding upon, and shall be part of the estate acquired by any one, and the successors and assigns of any one, acquiring title under or through any such deed of trust or mortgage, and a forfeiture and re-entry may be enforced following any breach by them or any of them.

Sidewalks and curbs and water and gas mains, also telephone and electric poles and wires, shall be installed, and streets graded, oiled and graveled, without expense to the Buyer.

That all and each of the restrictions, conditions and covenants herein contained shall in all respects terminate and end and be of no further effect, either legal or equitable, either on any property in said tract or on the parties hereto, their heirs, successors, devisees, executors, administrators or assigns, on and after January 1, A. D. 1950.

IN WITNESS WHEREOF, the said Seller, BANK OF AMERICA, a corporation, and the said

Buyer have hereunto set ..... hand..... and seal..... the day and year first above written.

BANK OF AMERICA

By.....

President.

By.....

Secretary.

Buyer's Signature:

.....  
.....

Buyer's Address:

.....  
.....

[109]



THIS INDENTURE, made the ..... day of .....  
.....in the year of our Lord one thousand nine hundred and twenty.....

BETWEEN BANK OF AMERICA, a corporation organized and doing business under the laws of the State of California, and having its principal place of business in the City of Los Angeles, County of Los Angeles, State of California, the party of the first part and....., the part..... of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars, gold coin of the United States of America, to it in hand paid by the said part..... of the second part, the receipt whereof is hereby ac-



knowledged, has granted, bargained and sold, and by these presents does grant, bargain and sell, convey and confirm, unto the said part..... of the second part, and to..... heirs and assigns forever, all that certain lot....., piece..... or parcel..... of land situate, lying and being in the City of Beverly Hills, County of Los Angeles, State of California, bounded and particularly described as follows, to-wit:

**RESTRICTIONS, RESERVATIONS AND CONDITIONS OF RECORD AND AS FOLLOWS:**

This conveyance is made upon the condition that said property shall not be used, nor shall any part thereof be used, for the purpose of drilling thereon for, or producing therefrom, oil, gas or any other mineral substance.

The purchaser of any lot or lots shall not, nor shall any of their assigns or successors in interest, nor those holding or claiming to hold thereunder, use or cause to be used, or allow or authorize in any manner, directly or indirectly, the premises, or any part thereof, to be used for the purpose of vending intoxicating liquors for drinking or any other purposes.

The premises shall not be rented, leased or conveyed to, held by, or occupied by any person other than of the white or Caucasian race.

All lots fronting on Wilshire Boulevard and to a depth of 150 feet therefrom may be used for either residence or business purposes, and shall cost not less than \$5,000.00, and any outbuildings, private

stables or private garages shall not be erected within 75 feet of Wilshire Boulevard.

All buildings to be erected on Doheny Drive, except Lot 350, shall be used exclusively as private residence, with a limit of one house to each lot, except Lots 360, 317 and 371, which may be occupied with one or more houses, and no residence to be erected on said lots shall cost less than \$5,000.00. The foundations of all said buildings shall show a set-back from the front property line of 20 feet, and all driveways leading to the rear of said premises, excepting Lot 350, shall be placed on the south side of said lots. On Lots 360, 361, 370 and 371, all buildings erected thereon must have a set-back from the side property line of at least five feet. Any out-buildings, private stable or garage erected in conjunction therewith shall be located not less than 75 feet from Doheny Drive. Lot 350 is governed by the same conditions as apply to property fronting on Wilshire Boulevard.

All buildings to be erected on Wetherly Drive shall be used exclusively as private residences, with a limit of one residence to each lot, and must represent a cost of not less than \$4,000.00. The foundations of all said buildings must show a set-back from the front property line of 20 feet, and all driveways leading to the rear of said dwellings, except Lots 288, 289, 299, 308, 309, 313, 344, 334, 333, 324, 323 and 319, inclusive shall be placed on the south side of said lots. On Lots 288, 298, 299, 308, 309, 334, 344, 333, 324, 323, 319 and 313, all buildings erected

thereon must have a set-back from the side property line of at least five feet, except Lots 313, 319, 288 and 347.

All buildings to be erected on Almont Drive and La Pere Drive shall have a set-back of 15 feet from the foundation to the front property line, and all driveways leading to the rear of said premises must be placed on the south side of the property, except Lots 164, 174, 175, 184, 185, 189, 195, 199, 200, 209, 210, 220, 226, 236, 237, 246, 247, 251, 257, 261, 262, 271, 272 and 282. On lots 164, 174, 175, 184, 185, 189, 195, 199, 200, 209, 210, 220, 226, 236, 237, 246, 247, 251, 257, 261, 262, 271, 272 and 282, inclusive, all buildings erected thereon must have a set-back of not less than 5 feet from the side line of said property, except Lots 164, 189, 195, 220, 226, 251, 257 and 282.

No buildings, however, can be erected on said lots at cost less than \$3,500.00, and this restriction applies where one or more buildings are erected on any one lot and intended for occupancy.

On lots facing on Almont and La Pere Drives, there are no restrictions against the building of double bungalows, duplexes, apartments, flats or bungalow courts, but restriction does apply against the erection of any building for use or occupancy as a mercantile business.

All buildings erected on Swall Drive shall have a set-back of 15 feet from the foundation to the front property line, and all driveways leading to the rear of said premises must be placed on the

south line of the property, except Lots 67, 100, 110, 133, 137, 138, 147, 148, 158, inclusive. On Lots 67, 100, 110, 133, 137, 138, 147, 148, 158, inclusive, all buildings erected thereon must have a set-back of not less than 5 feet from the side line of said property, except Lots 100, 133 and 158. No building, however, can be erected on said property at a cost less than \$3,500.00, and this restriction applies where one or more buildings are erected on one lot and intended for occupancy. There are no restrictions against the building of double bungalows, duplexes, apartments, flats or bungalow courts on property abutting Swall Drive, but restriction does apply against the erection of any building for use or occupancy as a mercantile business. Lot 67, facing Swall Drive, is restricted only to its general use for buildings and grounds for educational or religious purposes, private residences, double bungalows, duplexes, flats, apartments or bungalow courts.

All buildings erected on Clark Drive shall have a set-back of 15 feet from the foundation to the front property line, and all driveways leading to the rear of said premises must be placed on the south line of the property, except Lots 84, 46, 47, 56, 36 and 94, inclusive. On Lots 84, 46, 47, 56, 36 and 94, inclusive, all buildings erected thereon must have a set-back of five feet from the side line of said property, except Lots 36 and 94. No building, however, can be erected on said property at a cost less than \$3,500.00, and this restriction applies where one or

more buildings are erected on one lot and intended for occupancy. There are no restrictions against the building of double bungalows, duplexes, apartments, flats or bungalow courts on property abutting Clark Drive, but restriction does apply against the erection of any building for use or occupancy as a mercantile business. Lots 67 and 5, facing Clark Drive, are restricted only to their general use for buildings and grounds for educational or religious purposes, private residences, double bungalows, duplexes, flats, apartments or bungalow courts.

All lots having a frontage on Pruess Road, except Lot 5, and to a depth of 100 feet, may be used for either residence or business purposes, but any building erected thereon (except outbuildings, private stables or private garages) shall cost and be fairly worth \$3,500.00. Lot 5 may be used as playgrounds as well as for residence or business purposes.

All lots having a frontage on Burton Way may be used for either residence or business purposes, but any building erected thereon (except outbuildings, private stable or private garages) shall cost and be fairly worth \$3,500.00.

No building shall be permitted having a frontage on either Dayton Way or Clifton Way.

The breach of any of the conditions and covenants herein contained shall cause said premises, together with the appurtenances thereto belonging, to be forfeited to and revert to the grantors, their

heirs, successors or assigns, each of whom shall have the right to immediate entry upon said premises in the event of such breach; provided, however, that before any forfeiture may be declared or enforced, the grantors, their heirs, successors or assigns, shall post in a conspicuous place on the premises a written notice, declaring his intention so to do, and if within thirty days thereafter the grantee shall cure the breach, then no forfeiture shall be declared or enforced therefor. But the breach of any of the said conditions or covenants, or any re-entry by reason of such breach, shall not defeat or affect the lien of any mortgage or deed of trust made in good faith, for value, upon said land; provided, however, that the breach of any of said conditions may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of the trust deed or mortgage; but nevertheless, each and all of the said conditions and covenants shall remain at all times in full force and effect as against and shall be binding upon, and shall be part of the estate acquired by any one, and the successors and assigns of any one, acquiring title under or through any such deed of trust or mortgage, and a forfeiture and re-entry may be enforced following any breach by them or any of them.

Sidewalks and curbs and water and gas mains, also telephone and electric poles and wires, shall be installed, and streets graded, oiled and graveled, without expense to the Buyer.

That all and each of the restrictions, conditions

and covenants herein contained shall in all respects terminate and end and be of no further effect, either legal or equitable, either on any property in said tract or on the parties hereto, their heirs, successors, devisees, executors, administrators or assigns, on and after January 1, A. D. 1950. [110]

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the said part..... of the second part, and to ..... heirs and assigns forever.

In Testimony Whereof, BANK OF AMERICA, a corporation, has caused this deed to be duly executed, the name of the corporation being signed by its .....President and attested by its..... Secretary, with the corporation seal, the day and year first above written.

BANK OF AMERICA  
(SEAL) By.....  
President.

Attest:  
.....  
Secretary.

State of California,  
County of Los Angeles—ss.

On this ..... day of ....., in the year one thousand nine hundred and twenty.....,

before me, ....., a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and qualified, personally appeared..... known to me to be the.....President, and ....., known to me to be the ..... Secretary of Bank of America, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate above written.

.....  
Notary Public in and for Los Angeles County, State of California. [111]

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### AMENDMENT TO TRUST 109

Bank of America  
Los Angeles

RE.: TRUST 109

Gentlemen:

You are hereby advised that a certain Declaration of Trust, dated June 1, 1923, numbered 109, is hereby amended for and in respect to Paragraph 9, Page 6 of said trust as follows, to-wit:

THAT the said Trustee shall not be required to



post notice of non-responsibility on the property covered hereby, nor any part thereof, by reason of any subdivision, or other improvements in respect thereto, and that the bond to be required for the Trustee as satisfactory to it under said paragraph shall be a bond in the sum of \$50,000 given by the contractor for the protection of the trust, and there shall be deposited in the trust by the Beneficiary a sum of not less than \$45,000 to be paid out to the contractor by the Trustee upon the statement of the contractor supported by receipted bills O.K.'d by the Beneficiary.

Said Declaration of Trust is hereby modified and changed in accordance with the foregoing.

**RODEO LAND & WATER COMPANY**

By **F. B. SUTTON**

Vice-President

By **J. P. AUCKENBACK**

Asst. Secretary

**BERKELEY HALL SCHOOL**

By **LEILA L. COOPER**

President

By **MABEL R. COOPER**

Secretary

Los Angeles, California

September 28th, 1923

I hand you herewith check of Berkeley Hall School in the sum of \$38,500.00 to be used by you in accordance with the foregoing requirements.

**BERKELEY HALL SCHOOL**

By **M. M. GILCHRIST**, Agent. [112]

## RESPONDENT'S EXHIBIT A.

(Admitted in Evidence Sept. 27, 1933)

## QUIT CLAIM DEED

BANK OF ITALY NATIONAL TRUST AND SAVINGS ASSOCIATION, successor to BANK OF AMERICA in consideration of Ten and no/100 DOLLARS, to them in hand paid, the receipt of which is hereby acknowledged, does hereby release, remise and forever quitclaim to BERKELEY HALL SCHOOL, a corporation, all that real property in the City of Beverly Hills, County of Los Angeles, State of California, described as:

Lot Five (5), except those portions thereof conveyed by Bank of America to Fred O. Hammer and Edith W. Hammer, by deed dated June 9, 1925, to Omer J. Fortier and John B. Dennis by deed dated August 14, 1925, to Oscar M. Overell by deed dated January 29, 1924, and to Willard B. Follmer by deed dated June 4, 1925, also all of Lots Sixty-seven (67) and One Hundred Thirty-eight (138), Tract Seven Thousand Five (7005), as per map recorded in Book 72 Page 28 of Maps, in the office of the County Recorder of said County.

Witness the name of Bank of Italy National Trust and Savings Association, subscribed hereto by its Vice President, and Assistant Trust Officer, this 3rd day of August, 1927.

BANK OF ITALY NATIONAL TRUST AND SAVINGS ASSOCIATION.

By W. I. MELTENTHIN

Vice-President

By E. L. HUTCHINS

Assistant Trust Officer

State of California,  
County of Los Angeles—ss.

On this 5th day of August, A. D., 1927 before me, Edward M. Browder, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared A. I. Mellenthin, known to me to be the Vice President and E. L. Hutchins, known to me to be the Assistant Trust Officer of the Bank of Italy National Trust and Savings Association, the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal) EDWARD M. BROWDER  
Notary Public in and for said County and State.  
[113]

EX. A.

Order No. 1010798

When recorded, please mail this deed to Beverly Hills Branch, Security Trust & Savings Bank, Canon Drive at Burton Way, Beverly Hills, Calif.  
Compared. Read by Franklin.

Recorded at request of Title Insurance & Tr. Co.  
Aug. 23, 1927 at 8:30 A. M. in Book 7579, Page 322,  
of Official Records, Los Angeles County, Cal.

C. S. LOGAN  
County Recorder

I certify that I have correctly transcribed this document in above mentioned book.

L. FARQUHAR

1.00

#111 [114]

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RESPONDENT'S EXHIBIT **& C**

(Admitted in Evidence Sept. 27, 1933)

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47415

Notice of Election by Trustee to Have Income of  
Trust Taxed to Beneficiary  
(To be filed with Collector where return was filed)  
Date September 18, 1928.

Commissioner of Internal Revenue,  
(Attention: Records Division, Income Tax Unit)  
Washington, D. C.

Through the Collector of Internal Revenue  
at Los Angeles, Calif.

Sir:

In accordance with Section 704(b) of the Revenue Act of 1928, the undersigned trustee of the trust known as Rodeo Land & Water Co., Berkeley Hall School, # Bank of America 109 hereby certifies that such trust (1) had a single trustee, (2) was created and operated for the sole purpose of liquidating real property as a single venture (with such powers of administration as are incidental thereto, including the acquisition, improvement, conserva-

tion, division, and sale of such property), distributing the proceeds therefrom in due course to or for the beneficiaries, and discharging indebtedness secured by the trust property, and (3) has not made a return for the taxable year as an association; and therefore elects to have the above-named trust considered as a trust for the years 1923 to 1927, both inclusive, and the income thereof taxed to the beneficiaries.

AFFIDAVIT

I swear (or affirm) that this notice of election, including the statements therein, has been examined by me, and, to the best of my knowledge and belief, the statements made therein are true, and the election is made in good faith pursuant to the Revenue Act of 1928 and the Regulations issued under authority thereof.

BANK OF ITALY

National Trust and Savings Association

By C. M. NUJES

Assistant Trust Officer

(Signature of Trustee or Officer  
representing Trustee)

7th and Olive Streets,

(Address of Trustee or Officer)

Los Angeles, Calif.

Sworn to and subscribed before me this 18th day of September, 1928.

(Seal) CLARA A. NASON

(Signature of Officer Administering Oath)

Notary Public in and for the County of Los Angeles, State of California.

(Title) [115]

[Title of Court and Cause.]

PRAECIPE FOR RECORD

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board, (a) Petition, including annexed copy of deficiency letter, filed February 10, 1930. (b) Answer, filed March 29, 1930.
3. Findings of fact and opinion of the Board, promulgated January 24, 1935.
4. Decision of the Board, entered January 31, 1935.
5. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.
6. Statement of evidence as settled and allowed.
7. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record.
8. This praecipe.

(Signed) ROBERT H. JACKSON

Assistant General Counsel for the Bureau of Internal Revenue.

Service of a copy of the within praecipe is hereby admitted this 30th day of December, 1935.

CLAUDE I. PARKER

RALPH W. SMITH

Attorney for Respondent.

[Endorsed]: Filed Jan. 9, 1936. [116]

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[Title of Court and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 116, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 5th day of Feb., 1936.

(Seal) B. D. GAMBLE

Clerk, United States Board of Tax Appeals.

[Endorsed]: No. 8122. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Berkeley Hall School, Inc., Respondent. Transcript of the Record Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed February 10, 1936.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.